Real Estate Settlement Procedures Act

Community Bankers for Compliance School

2016

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Section 1: Manual Discussion

Presentation

Our usual procedure for a manual is to present the regulation in its numeric order. As the regulations become more and more fragmented, it becomes more difficult to maintain this pattern.

This manual has rearranged the regulation into an order as the issues would appear in a typical lending process – general rules, application, closing, and servicing. We hope that this will assist you in the understanding of the regulation, and its impact on the various stages of a loan.

Section 2: Introduction

Introduction

The Real Estate Settlement Procedures Act of 1974 (RESPA) (12 U.S.C. § 2601) became effective on June 20, 1975. The Real Estate Settlement Procedures Act Amendments of 1975 (RESPA Amendments) became effective on June 30, 1976, and made major substantive changes in the existing law.

There have been numerous changes in the law and regulation over the years, the most recent of which was Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). This law transferred rulemaking authority for Regulation X (Real Estate Settlement Procedures Act) from the Department of Housing and Urban Development (HUD) to the Consumer Financial Protection Bureau (CFPB).

Purpose of RESPA

The Real Estate Settlement Procedures Act of 1974 was legislated to prevent kickbacks and hidden fees. In addition, it rode the wave of consumer disclosures that were designed to increase the amount of information available during the application for and acquisition of credit.

Section 3: Introductory Section of the Commentary

Regulatory Commentary

Introduction

1. ***Official status.*** *This commentary is the primary vehicle by which the Bureau of Consumer Financial Protection issues official interpretations of Regulation X. Good faith compliance with this commentary affords protection from liability under section 19(b) of the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. 2617(b).*

2. ***Requests for official interpretations.*** *A request for an official interpretation shall be in writing and addressed to the Associate Director, Research, Markets, and Regulations, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20552. A request shall contain a complete statement of all relevant facts concerning the issue, including copies of all pertinent documents. Except in unusual circumstances, such official interpretations will not be issued separately but will be incorporated in the official commentary to this part, which will be amended periodically. No official interpretations will be issued approving financial institutions' forms or statements. This restriction does not apply to forms or statements whose use is required or sanctioned by a government agency.*

3. ***Unofficial oral interpretations.*** *Unofficial oral interpretations may be provided at the discretion of Bureau staff. Written requests for such interpretations should be sent to the address set forth for official interpretations. Unofficial oral interpretations provide no protection under section 19(b) of RESPA. Ordinarily, staff will not issue unofficial oral interpretations on matters adequately covered by this part or the official Bureau interpretations.*

4. ***Rules of construction.***

> *(a) Lists that appear in the commentary may be exhaustive or illustrative; the appropriate construction should be clear from the context. In most cases, illustrative lists are introduced by phrases such as "including, but not limited to," "among other things," "for example," or "such as."*
>
> *(b) Throughout the commentary, reference to "this section" or "this paragraph" means the section or paragraph in the regulation that is the subject of the comment.*

5. ***Comment designations.*** *Each comment in the commentary is identified by a number and the regulatory section or paragraph that the comment interprets. The comments are designated with as much specificity as possible according to the particular regulatory provision addressed. For example, some of the comments to §1024.37(c)(1) are further divided by subparagraph, such as comment 37(c)(1)(i)-1. In other cases, comments have more general application and are designated, for example, as comment 40(a)-1. This introduction may be cited as comments I-1 through I-5.*

Section 4: General Definitions [12 C.F.R. § 1024.2]

Definitions [12 C.F.R. § 1024.2]

Synopsis

The regulation includes specific definitions for this regulation. While many of the definitions are fairly obvious, some of them are unique to this regulation, and must be understood within a RESPA context.

There are additional definitions that appear in other parts of this manual, and are placed in the appropriate section as the definitions are specific to that portion of the regulation.

Regulatory Text - Definitions [12 C.F.R. § 1024.2]

(a) ***Statutory terms.*** *All terms defined in RESPA (12 U.S.C. 2602) are used in accordance with their statutory meaning unless otherwise defined in paragraph (b) of this section or elsewhere in this part.*

(b) ***Other terms.*** *As used in this part:*

Application *means the submission of a borrower's financial information in anticipation of a credit decision relating to a federally related mortgage loan, which shall include the borrower's name, the borrower's monthly income, the borrower's social security number to obtain a credit report, the property address, an estimate of the value of the property, the mortgage loan amount sought, and any other information deemed necessary by the loan originator. An application may either be in writing or electronically submitted, including a written record of an oral application.*

Balloon payment *has the same meaning as "balloon payment" under Regulation Z (12 CFR part 1026).*

Bureau *means the Bureau of Consumer Financial Protection.*

Business day *means a day on which the offices of the business entity are open to the public for carrying on substantially all of the entity's business functions.*

Changed circumstances *means: Omitted here – discussed extensively in the Good Faith Estimate section of this manual.*

Dealer *means, in the case of property improvement loans, a seller, contractor, or supplier of goods or services. In the case of manufactured home loans, "dealer" means one who engages in the business of manufactured home retail sales.*

Dealer loan or dealer consumer credit contract *means, generally, any arrangement in which a dealer assists the borrower in obtaining a federally related mortgage loan from the funding lender and then assigns the dealer's legal interests to the funding lender and receives*

the net proceeds of the loan. The funding lender is the lender for the purposes of the disclosure requirements of this part. If a dealer is a "creditor" as defined under the definition of "federally related mortgage loan" in this part, the dealer is the lender for purposes of this part.

***Effective date of transfer** is defined in section 6(i)(1) of RESPA (12 U.S.C. 2605(i)(1)). In the case of a home equity conversion mortgage or reverse mortgage as referenced in this section, the effective date of transfer is the transfer date agreed upon by the transferee servicer and the transferor servicer.*

***Federally related mortgage loan** means:*

(1) Any loan (other than temporary financing, such as a construction loan):

(i) That is secured by a first or subordinate lien on residential real property, including a refinancing of any secured loan on residential real property, upon which there is either:

(A) Located or, following settlement, will be constructed using proceeds of the loan, a structure or structures designed principally for occupancy of from one to four families (including individual units of condominiums and cooperatives and including any related interests, such as a share in the cooperative or right to occupancy of the unit); or

(B) Located or, following settlement, will be placed using proceeds of the loan, a manufactured home; and

(ii) For which one of the following paragraphs applies. The loan:

(A) Is made in whole or in part by any lender that is either regulated by or whose deposits or accounts are insured by any agency of the Federal Government;

(B) Is made in whole or in part, or is insured, guaranteed, supplemented, or assisted in any way:

(1) By the Secretary of the Department of Housing and Urban Development (HUD) or any other officer or agency of the Federal Government; or

(2) Under or in connection with a housing or urban development program administered by the Secretary of HUD or a housing or related program administered by any other officer or agency of the Federal Government;

(C) Is intended to be sold by the originating lender to the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation (or its successors), or a financial institution from which the loan is to be purchased by the Federal Home Loan Mortgage Corporation (or its successors);

(D) Is made in whole or in part by a "creditor," as defined in section 103(g) of the Consumer Credit Protection Act (15 U.S.C. 1602(g)), that makes or invests in residential real estate loans aggregating more than $1,000,000 per year. For

purposes of this definition, the term "creditor" does not include any agency or instrumentality of any State, and the term "residential real estate loan" means any loan secured by residential real property, including single-family and multifamily residential property;

(E) Is originated either by a dealer or, if the obligation is to be assigned to any maker of mortgage loans specified in paragraphs (1)(ii)(A) through (D) of this definition, by a mortgage broker; or

(F) Is the subject of a home equity conversion mortgage, also frequently called a "reverse mortgage," issued by any maker of mortgage loans specified in paragraphs (1)(ii)(A) through (D) of this definition.

(2) Any installment sales contract, land contract, or contract for deed on otherwise qualifying residential property is a federally related mortgage loan if the contract is funded in whole or in part by proceeds of a loan made by any maker of mortgage loans specified in paragraphs (1)(ii) (A) through (D) of this definition.

(3) If the residential real property securing a mortgage loan is not located in a State, the loan is not a federally related mortgage loan.

***Good faith estimate or GFE** means an estimate of settlement charges a borrower is likely to incur, as a dollar amount, and related loan information, based upon common practice and experience in the locality of the mortgaged property, as provided on the form prescribed in §1024.7 and prepared in accordance with the Instructions in Appendix C to this part.*

***HUD** means the Department of Housing and Urban Development.*

***HUD-1 or HUD-1A settlement statement** (also HUD-1 or HUD-1A) means the statement that is prescribed in this part for setting forth settlement charges in connection with either the purchase or the refinancing (or other subordinate lien transaction) of 1- to 4-family residential property.*

***Lender** means, generally, the secured creditor or creditors named in the debt obligation and document creating the lien. For loans originated by a mortgage broker that closes a federally related mortgage loan in its own name in a table funding transaction, the lender is the person to whom the obligation is initially assigned at or after settlement. A lender, in connection with dealer loans, is the lender to whom the loan is assigned, unless the dealer meets the definition of creditor as defined under "federally related mortgage loan" in this section. See also §1024.5(b)(7), secondary market transactions.*

***Loan originator** means a lender or mortgage broker.*

***Manufactured home** is defined in HUD regulation 24 CFR 3280.2.*

***Mortgage broker** means a person (other than an employee of a lender) that renders origination services and serves as an intermediary between a borrower and a lender in a transaction involving a federally related mortgage loan, including such a person that closes the loan in its own name in a table-funded transaction.*

Mortgaged property *means the real property that is security for the federally related mortgage loan.*

Origination service *means any service involved in the creation of a federally related mortgage loan, including but not limited to the taking of the loan application, loan processing, the underwriting and funding of the loan, and the processing and administrative services required to perform these functions.*

Person *is defined in section 3(5) of RESPA (12 U.S.C. 2602(5)).*

Prepayment penalty *has the same meaning as "prepayment penalty" under Regulation Z (12 CFR part 1026).*

Public Guidance Documents *means FEDERAL REGISTER documents adopted or published, that the Bureau may amend from time-to-time by publication in the FEDERAL REGISTER. These documents are also available from the Bureau. Requests for copies of Public Guidance Documents should be directed to the Associate Director, Research, Markets, and Regulations, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20552.*

Refinancing *means a transaction in which an existing obligation that was subject to a secured lien on residential real property is satisfied and replaced by a new obligation undertaken by the same borrower and with the same or a new lender. The following shall not be treated as a refinancing, even when the existing obligation is satisfied and replaced by a new obligation with the same lender (this definition of "refinancing" as to transactions with the same lender is similar to Regulation Z, 12 CFR 1026.20(a)):*

(1) A renewal of a single payment obligation with no change in the original terms;

(2) A reduction in the annual percentage rate as computed under the Truth in Lending Act with a corresponding change in the payment schedule;

(3) An agreement involving a court proceeding;

(4) A workout agreement, in which a change in the payment schedule or change in collateral requirements is agreed to as a result of the consumer's default or delinquency, unless the rate is increased or the new amount financed exceeds the unpaid balance plus earned finance charges and premiums for continuation of allowable insurance; and

(5) The renewal of optional insurance purchased by the consumer that is added to an existing transaction, if disclosures relating to the initial purchase were provided.

Regulation Z *means the regulations issued by the Bureau (12 CFR part 1026) to implement the Federal Truth in Lending Act (15 U.S.C. 1601 et seq.), and includes the Commentary on Regulation Z.*

Required use *means a situation in which a person must use a particular provider of a settlement service in order to have access to some distinct service or property, and the person will pay for the settlement service of the particular provider or will pay a charge attributable, in whole or in part, to the settlement service. However, the offering of a package (or combination*

of settlement services) or the offering of discounts or rebates to consumers for the purchase of multiple settlement services does not constitute a required use. Any package or discount must be optional to the purchaser. The discount must be a true discount below the prices that are otherwise generally available, and must not be made up by higher costs elsewhere in the settlement process.

***RESPA** means the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.).*

***Settlement** means the process of executing legally binding documents regarding a lien on property that is subject to a federally related mortgage loan. This process may also be called "closing" or "escrow" in different jurisdictions.*

***Settlement service** means any service provided in connection with a prospective or actual settlement, including, but not limited to, any one or more of the following:*

(1) Origination of a federally related mortgage loan (including, but not limited to, the taking of loan applications, loan processing, and the underwriting and funding of such loans);

(2) Rendering of services by a mortgage broker (including counseling, taking of applications, obtaining verifications and appraisals, and other loan processing and origination services, and communicating with the borrower and lender);

(3) Provision of any services related to the origination, processing or funding of a federally related mortgage loan;

(4) Provision of title services, including title searches, title examinations, abstract preparation, insurability determinations, and the issuance of title commitments and title insurance policies;

(5) Rendering of services by an attorney;

(6) Preparation of documents, including notarization, delivery, and recordation;

(7) Rendering of credit reports and appraisals;

(8) Rendering of inspections, including inspections required by applicable law or any inspections required by the sales contract or mortgage documents prior to transfer of title;

(9) Conducting of settlement by a settlement agent and any related services;

(10) Provision of services involving mortgage insurance;

(11)Provision of services involving hazard, flood, or other casualty insurance or homeowner's warranties;

(12) Provision of services involving mortgage life, disability, or similar insurance designed to pay a mortgage loan upon disability or death of a borrower, but only if such insurance is required by the lender as a condition of the loan;

(13) Provision of services involving real property taxes or any other assessments or charges on the real property;

(14) Rendering of services by a real estate agent or real estate broker; and

(15) Provision of any other services for which a settlement service provider requires a borrower or seller to pay.

***Special information booklet** means the booklet adopted pursuant to section 5 of RESPA (12 U.S.C. 2604) to help persons understand the nature and costs of settlement services. The Bureau publishes the form of the special information booklet in the FEDERAL REGISTER or by other public notice. The Bureau may issue or approve additional booklets or alternative booklets by publication of a Notice in the FEDERAL REGISTER.*

***State** means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.*

***Table funding** means a settlement at which a loan is funded by a contemporaneous advance of loan funds and an assignment of the loan to the person advancing the funds. A table-funded transaction is not a secondary market transaction (see §1024.5(b)(7)).*

***Third party** means a settlement service provider other than a loan originator.*

***Title company** means any institution, or its duly authorized agent, that is qualified to issue title insurance.*

***Title service** means any service involved in the provision of title insurance (lender's or owner's policy), including but not limited to: Title examination and evaluation; preparation and issuance of title commitment; clearance of underwriting objections; preparation and issuance of a title insurance policy or policies; and the processing and administrative services required to perform these functions. The term also includes the service of conducting a settlement.*

***Tolerance** means the maximum amount by which the charge for a category or categories of settlement costs may exceed the amount of the estimate for such category or categories on a GFE.*

Regulatory Commentary – Definitions [12 C.F.R. § 1024.2]

The regulation does not offer any commentary for this section.

Section 5: E-Sign Applicability [12 CFR § 1024.3]

E-Sign Act [12 CFR § 1024.3]

Synopsis

All disclosures required by RESPA can be sent electronically, provided the E-Sign Act is followed explicitly.

Regulatory Text - E-Sign Applicability [12 CFR § 1024.3]

E-Sign Applicability. *The disclosures required by this part may be provided in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 et seq.).*

Regulatory Commentary – E-Sign Applicability [12 CFR § 1024.3]

The regulation does not offer any commentary for this section.

Section 6: Guidance from CFPB [12 C.F.R. § 1024.4]

Reliance on Rule, Regulation or Interpretation by the Bureau [12 CFR § 1024.4]

Synopsis

In addition to the regulatory text, there are many interpretations that have been made by the CFPB and the Department of Housing and Urban Development (the former interpreter of the regulation.) These interpretations may be used as if they were part of the regulation itself. There are periodic changes to the commentary that incorporate these interpretations.

Regulatory Text – Reliance on Rule, Regulation or Interpretation by the Bureau [12 CFR § 1024.4]

(a) ***Rule, regulation or interpretation.***

(1) For purposes of sections 19(a) and (b) of RESPA (12 U.S.C. 2617(a) and (b)), only the following constitute a rule, regulation or interpretation of the Bureau:

(i) All provisions, including appendices and supplements, of this part. Any other document referred to in this part is not incorporated in this part unless it is specifically set out in this part;

(ii) Any other document that is published in the FEDERAL REGISTER by the Bureau and states that it is an "interpretation," "interpretive rule," "commentary," or a "statement of policy" for purposes of section 19(a) of RESPA. Except in unusual circumstances, interpretations will not be issued separately but will be incorporated in an official interpretation to this part, which will be amended periodically.

(2) A "rule, regulation, or interpretation thereof by the Bureau" for purposes of section 19(b) of RESPA (12 U.S.C. 2617(b)) shall not include the special information booklet prescribed by the Bureau or any other statement or issuance, whether oral or written, by an officer or representative of the Bureau, letter or memorandum by the Director, General Counsel, or other officer or employee of the Bureau, preamble to a regulation or other issuance of the Bureau, Public Guidance Document, report to Congress, pleading, affidavit or other document in litigation, pamphlet, handbook, guide, telegraphic communication, explanation, instructions to forms, speech or other material of any nature which is not specifically included in paragraph (a)(1) of this section.

(b) All informal counsel's opinions and staff interpretations issued by HUD before November 2, 1992, were withdrawn as of that date. Courts and administrative agencies, however, may use previous opinions to determine the validity of conduct under the previous Regulation X.

Regulatory Commentary – Reliance on Rule, Regulation or Interpretation by the Bureau [12 CFR § 1024.4]

The regulation does not offer any commentary for this section.

Section 7: Coverage [12 C.F.R. § 1024.5]

Coverage [12 CFR § 1024.5]

Synopsis

The Real Estate Settlement Procedures Act applies to all federally related mortgage loans. Generally, this means that if an institution is insured by federal deposit insurance and the loan is secured by a one- to four-family residential property, then RESPA applies.

Exemptions

The following loans are exempt from the RESPA disclosure requirements:

- A loan on property of 25 acres or more.
  - Purpose not material.
  - Number and types of buildings not material.
- Business purpose loans as defined by Regulation Z.
  - Need to review Regulation Z requirements to fully understand these implications.
- Temporary financing
  - Construction loans (1-4 family) not covered.
  - If the construction loan is used as, or may be converted to permanent financing by the same lender, a lender cannot use this exception.
  - If the lender issues a commitment for the end financing, the lender cannot use this exception. Conditions do not matter.
  - If the loan is used to finance transfer of title to the first user, the lender cannot use this exception.
  - A construction loan for new or rehabilitated 1-4 family residential property, other than a loan to a *bona fide* builder, cannot exceed 2 years, or it is subject to this regulation.
  - A "bridge loan" or "swing loan" in which a lender takes a security interest a 1-4 family residential property is not covered by RESPA.
- Vacant land, unless some of the loan proceeds will be used to place a structure on the property within 2 years from the settlement date.
- Assumption without lender approval.
- Loan conversions.
- Secondary market transactions.

Relation to State Laws

This portion of the regulation has a section devoted to this issue. However, for most states, this portion has no impact.

Home Equity Lines of Credit

It is generally known that a significant portion of RESPA does not apply to open-end home equity lines of credit. However, none of the above exemptions make mention of the exempt status of such lines of credit. Rather, open-end home equity lines of credit are specifically exempted under nearly all of the unique disclosure requirements throughout the Act. In brief, the only RESPA disclosure requirement that applies to open-end home equity lines of credit is the affiliated business arrangement disclosure.

Regulatory Text – Coverage of RESPA [12 CFR § 1024.5]

(a) ***Applicability****. RESPA and this part apply to all federally related mortgage loans, except for the exemptions provided in paragraph (b) of this section.*

(b) ***Exemptions.***

(1) A loan on property of 25 acres or more.

(2) ***Business purpose loans.*** *An extension of credit primarily for a business, commercial, or agricultural purpose, as defined by 12 CFR 1026.3(a)(1) of Regulation Z. Persons may rely on Regulation Z in determining whether the exemption applies.*

(3) ***Temporary financing.*** *Temporary financing, such as a construction loan. The exemption for temporary financing does not apply to a loan made to finance construction of 1- to 4-family residential property if the loan is used as, or may be converted to, permanent financing by the same lender or is used to finance transfer of title to the first user. If a lender issues a commitment for permanent financing, with or without conditions, the loan is covered by this part. Any construction loan for new or rehabilitated 1- to 4-family residential property, other than a loan to a bona fide builder (a person who regularly constructs 1- to 4-family residential structures for sale or lease), is subject to this part if its term is for two years or more. A "bridge loan" or "swing loan" in which a lender takes a security interest in otherwise covered 1- to 4-family residential property is not covered by RESPA and this part.*

(4) ***Vacant land.*** *Any loan secured by vacant or unimproved property, unless within two years from the date of the settlement of the loan, a structure or a manufactured home will be constructed or placed on the real property using the loan proceeds. If a loan for a structure or manufactured home to be placed on vacant or unimproved property will be secured by a lien on that property, the transaction is covered by this part.*

(5) ***Assumption without lender approval.*** *Any assumption in which the lender does not have the right expressly to approve a subsequent person as the borrower on an existing federally related mortgage loan. Any assumption in which the lender's permission is both required and obtained is covered by RESPA and this part, whether or not the lender charges a fee for the assumption.*

(6) ***Loan conversions.*** *Any conversion of a federally related mortgage loan to different terms that are consistent with provisions of the original mortgage instrument, as long as a new note is not required, even if the lender charges an additional fee for the conversion.*

(7) ***Secondary market transactions.*** *A bona fide transfer of a loan obligation in the secondary market is not covered by RESPA and this part, except with respect to RESPA (12 U.S.C. 2605) and subpart C of this part (§§1024.30-1024.41). In determining what constitutes a bona fide transfer, the Bureau will consider the real source of funding and the real interest of the funding lender. Mortgage broker transactions that are table-funded are not secondary market transactions. Neither the creation of a dealer loan or dealer consumer credit contract, nor the first assignment of such loan or contract to a lender, is a secondary market transaction (see §1024.2).*

(c) ***Relation to State laws.***

(1) State laws that are inconsistent with RESPA or this part are preempted to the extent of the inconsistency. However, RESPA and these regulations do not annul, alter, affect, or exempt any person subject to their provisions from complying with the laws of any State with respect to settlement practices, except to the extent of the inconsistency.

(2) Upon request by any person, the Bureau is authorized to determine if inconsistencies with State law exist; in doing so, the Bureau shall consult with appropriate Federal agencies.

(i) The Bureau may not determine that a State law or regulation is inconsistent with any provision of RESPA or this part, if the Bureau determines that such law or regulation gives greater protection to the consumer.

(ii) In determining whether provisions of State law or regulations concerning affiliated business arrangements are inconsistent with RESPA or this part, the Bureau may not construe those provisions that impose more stringent limitations on affiliated business arrangements as inconsistent with RESPA so long as they give more protection to consumers and/or competition.

(3) Any person may request the Bureau to determine whether an inconsistency exists by submitting to the address established by the Bureau to request an official interpretation, a copy of the State law in question, any other law or judicial or administrative opinion that implements, interprets or applies the relevant provision, and an explanation of the possible inconsistency. A determination by the Bureau that an inconsistency with State law exists will be made by publication of a notice in the FEDERAL REGISTER. "Law" as used in this section includes regulations and any enactment which has the force and effect of law and is issued by a State or any political subdivision of a State.

(4) A specific preemption of conflicting State laws regarding notices and disclosures of mortgage servicing transfers is set forth in §1024.33(d).

Regulatory Commentary – Coverage of RESPA [12 CFR § 1024.5]

5(c) Relation to State laws.

Paragraph 5(c)(1).

(1) State laws that are inconsistent with the requirements of RESPA or Regulation X may be preempted by RESPA or Regulation X. State laws that give greater protection to consumers are not inconsistent with and are not preempted by RESPA or Regulation X. In addition, nothing in RESPA or Regulation X should be construed to preempt the entire field of regulation of the practices covered by RESPA or Regulation X, including the regulations in Subpart C with respect to mortgage servicers or mortgage servicing.

Section 8: Kickbacks and Unearned Fees [12 C.F.R. § 1024.14]

Synopsis - Section 8 Violations and Penalties

Any violation of this section is a violation of section 8 of RESPA and is subject to enforcement by the CFPB. Any person who violates this section will be sanctioned accordingly.

The enforcement provisions of RESPA were formerly included in § 1024.19. Effective January 10, 2014, these provisions were removed and reserved.

No Referral Fees

No person shall give and no person shall accept any fee, kickback, or other thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or part of a settlement service involving a federally related mortgage loan shall be referred to any person. Any referral of a settlement service is not a compensable service, except as set forth in section 1024.14(g)(1). A business entity (whether or not in an affiliate relationship) may not pay any other business entity or the employees of any other business entity for the referral of settlement service business.

No Split of Charges Except for Actual Services Performed

No person may give and no person may accept any portion, split, or percentage of any charge made or received for the rendering of a settlement service in connection with a transaction involving a federally related mortgage loan other than for services actually performed. A charge by a person for which no or nominal services are performed or for which duplicative fees are charged is an unearned fee and violates this section. The source of the payment does not determine whether or not a service is compensable. The prohibitions of this part may not be avoided by creating an arrangement wherein the purchaser of services splits the fee.

Thing of Value

This term is broadly defined in RESPA. It includes, without limitation, the following:

- Money
- Things
- Discounts
- Salaries
- Commissions
- Fees
- Duplicate payments of a charge
- Stock
- Dividends

- Distributions of partnership profits
- Franchise royalties
- Credits representing monies that may be paid at a future date
- Opportunity to participate in a money-making program
- Retained or increased earnings
- Increased equity in a parent or subsidiary entity
- Special bank deposits or accounts
- Special or unusual banking terms
- Services of all types at special or free rates
- Sales or rentals at special prices or rates
- Lease or rental payments based in whole or in part on the amount of business referred
- Trips and payment of another person's expenses
- Reduction in credit against an existing obligation

The term "payment" is used throughout sections 1024.14 and 1024.15 synonymously with the giving or receiving of any "thing of value" and does not require transfer of money.

Agreement or Understanding

An agreement or understanding for the referral of business incident to or part of a settlement service does not need to be written or verbalized but may be established by a practice, pattern, or course of conduct. When a thing of value is received repeatedly and is connected in any way with the volume or value of the business referred, the receipt of the thing of value is evidence that it is made pursuant to an agreement or understanding for the referral of business.

Referral

A referral includes any oral or written action directed to a person which has the effect of affirmatively influencing the selection by any person of a provider of a settlement service or business incident to or part of a settlement service when such person will pay for such settlement service or business incident thereto or pay a charge attributable in whole or in part to such settlement service or business.

A referral also occurs whenever a person paying for a settlement service or business incident thereto is required to use a particular provider of a settlement service or business incident thereto.

Exemptions for Fees, Salaries, Compensation, or Other Payments

The following are permissible:

- A payment to an attorney for services actually rendered.
- A payment by a title company to its duly appointed agent for services actually performed in the issuance of a policy of title insurance.

- A payment by a lender to its duly appointed agent or contractor for services actually performed in the origination, processing, or funding of a loan.
- A payment to any person of a bona fide salary or compensation or other payment for goods or facilities actually furnished or for services actually performed.
- A payment pursuant to cooperative brokerage and referral arrangements or agreements between real estate agents and real estate brokers. (The statutory exemption restated in this paragraph refers only to fee divisions within real estate brokerage arrangements when all parties are acting in a real estate brokerage capacity, and has no applicability to any fee arrangements between real estate brokers and mortgage brokers or between mortgage brokers.)
- Normal promotional and educational activities that are not conditioned on the referral of business and do not involve the defraying of expenses that otherwise would be incurred by persons in a position to refer settlement services or business incident thereto.
- A payment by an employer to its own bona fide employee for generating business for that employer.
- A payment by an employer to its bona fide employee for the referral of settlement service business to a settlement service provider that has an affiliate relationship with the employer or in which the employer has a direct or beneficial ownership interest of more than 1.0 percent, if the following conditions are met:
    - The employee does not perform settlement services in any transaction, and
    - Before the referral, the employee provides to the person being referred a written disclosure (Affiliated Business Arrangement).
    - The marketing of a settlement service or product of an affiliated entity, including the collection and conveyance of information or the taking of an application or order for an affiliated entity, does not constitute the performance of a settlement service.
    - The marketing of a settlement service or product may include incidental communications with the consumer after the application or order, such as providing the consumer with information about the status of an application or order.
- Marketing shall not include serving as the ongoing point of contact for coordinating the delivery and provision of settlement services.

The CFPB may investigate high prices to see if they are the result of a referral fee or a split of a fee. If the payment of a thing of value bears no reasonable relationship to the market value of the goods or services provided, then the excess is not for services or goods actually performed or provided. These facts may be used as evidence of a violation of section 8 and may serve as a basis for a RESPA investigation. High prices standing alone are not proof of a RESPA violation.

The value of a referral (i.e., the value of any additional business obtained thereby) is not to be taken into account in determining whether the payment exceeds the reasonable value of such goods, facilities, or services. The fact that the transfer of the thing of value does not result in an increase in any charge made by the person giving the thing of value is irrelevant in determining whether the act is prohibited.

Multiple Services

When a person in a position to refer settlement service business, such as an attorney, mortgage lender, real estate broker or agent, or developer or builder, receives a payment for providing additional settlement services as part of a real estate transaction, such payment must be for services that are actual, necessary, and distinct from the primary services provided by such person.

For example, for an attorney of the buyer or seller to receive compensation as a title agent, the attorney must perform core title agent services (for which liability arises) separate from attorney services, including the evaluation of the title search to determine the insurability of the title, the clearance of underwriting objections, the actual issuance of the policy or policies on behalf of the title insurance company, and, where customary, issuance of the title commitment, conducting of the title search, and closing.

Recordkeeping

Any documents required by this section shall be retained for five (5) years from the date of execution.

Regulatory Text - Prohibition against kickbacks and unearned fees [12 CFR § 1024.14]

(a) ***Section 8 violation.*** *Any violation of this section is a violation of section 8 of RESPA (12 U.S.C. 2607).*

(b) ***No referral fees****. No person shall give and no person shall accept any fee, kickback or other thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or part of a settlement service involving a federally related mortgage loan shall be referred to any person. Any referral of a settlement service is not a compensable service, except as set forth in §1024.14(g)(1). A company may not pay any other company or the employees of any other company for the referral of settlement service business.*

(c) ***No split of charges except for actual services performed****. No person shall give and no person shall accept any portion, split, or percentage of any charge made or received for the rendering of a settlement service in connection with a transaction involving a federally related mortgage loan other than for services actually performed. A charge by a person for which no or nominal services are performed or for which duplicative fees are charged is an unearned fee and violates this section. The source of the payment does not determine whether or not a service is compensable. Nor may the prohibitions of this part be avoided by creating an arrangement wherein the purchaser of services splits the fee.*

(d) ***Thing of value****. This term is broadly defined in section 3(2) of RESPA (12 U.S.C. 2602(2)). It includes, without limitation, monies, things, discounts, salaries, commissions, fees, duplicate payments of a charge, stock, dividends, distributions of partnership profits, franchise royalties, credits representing monies that may be paid at a future date, the opportunity to participate in a money-making program, retained or increased earnings, increased equity in a parent or subsidiary*

entity, special bank deposits or accounts, special or unusual banking terms, services of all types at special or free rates, sales or rentals at special prices or rates, lease or rental payments based in whole or in part on the amount of business referred, trips and payment of another person's expenses, or reduction in credit against an existing obligation. The term "payment" is used throughout §§1024.14 and 1024.15 as synonymous with the giving or receiving of any "thing of value" and does not require transfer of money.

(e) ***Agreement or understanding****. An agreement or understanding for the referral of business incident to or part of a settlement service need not be written or verbalized but may be established by a practice, pattern or course of conduct. When a thing of value is received repeatedly and is connected in any way with the volume or value of the business referred, the receipt of the thing of value is evidence that it is made pursuant to an agreement or understanding for the referral of business.*

(f) ***Referral****.*

(1) A referral includes any oral or written action directed to a person which has the effect of affirmatively influencing the selection by any person of a provider of a settlement service or business incident to or part of a settlement service when such person will pay for such settlement service or business incident thereto or pay a charge attributable in whole or in part to such settlement service or business.

(2) A referral also occurs whenever a person paying for a settlement service or business incident thereto is required to use (see §1024.2, "required use") a particular provider of a settlement service or business incident thereto.

(g) ***Fees, salaries, compensation, or other payments.***

(1) Section 8 of RESPA permits:

(i) A payment to an attorney at law for services actually rendered;

(ii) A payment by a title company to its duly appointed agent for services actually performed in the issuance of a policy of title insurance;

(iii) A payment by a lender to its duly appointed agent or contractor for services actually performed in the origination, processing, or funding of a loan;

(iv) A payment to any person of a bona fide salary or compensation or other payment for goods or facilities actually furnished or for services actually performed;

(v) A payment pursuant to cooperative brokerage and referral arrangements or agreements between real estate agents and real estate brokers. (The statutory exemption restated in this paragraph refers only to fee divisions within real estate brokerage arrangements when all parties are acting in a real estate brokerage capacity, and has no applicability to any fee arrangements between real estate brokers and mortgage brokers or between mortgage brokers.);

(vi) Normal promotional and educational activities that are not conditioned on the referral of business and that do not involve the defraying of expenses that otherwise would be incurred by persons in a position to refer settlement services or business incident thereto; or

(vii) An employer's payment to its own employees for any referral activities.

(2) The Bureau may investigate high prices to see if they are the result of a referral fee or a split of a fee. If the payment of a thing of value bears no reasonable relationship to the market value of the goods or services provided, then the excess is not for services or goods actually performed or provided. These facts may be used as evidence of a violation of section 8 and may serve as a basis for a RESPA investigation. High prices standing alone are not proof of a RESPA violation. The value of a referral (i.e., the value of any additional business obtained thereby) is not to be taken into account in determining whether the payment exceeds the reasonable value of such goods, facilities or services. The fact that the transfer of the thing of value does not result in an increase in any charge made by the person giving the thing of value is irrelevant in determining whether the act is prohibited.

*(3) **Multiple services**. When a person in a position to refer settlement service business, such as an attorney, mortgage lender, real estate broker or agent, or developer or builder, receives a payment for providing additional settlement services as part of a real estate transaction, such payment must be for services that are actual, necessary and distinct from the primary services provided by such person. For example, for an attorney of the buyer or seller to receive compensation as a title agent, the attorney must perform core title agent services (for which liability arises) separate from attorney services, including the evaluation of the title search to determine the insurability of the title, the clearance of underwriting objections, the actual issuance of the policy or policies on behalf of the title insurance company, and, where customary, issuance of the title commitment, and the conducting of the title search and closing.*

*(h) **Recordkeeping**. Any documents provided pursuant to this section shall be retained for five (5) years from the date of execution.*

*(i) **Appendix B of this part**. Illustrations in Appendix B of this part demonstrate some of the requirements of this section.*

Regulatory Commentary [12 CFR § 1024.14]

The regulation does not offer any commentary on this section.

Appendix B to Part 1024: Illustrations of Requirements of RESPA

The following section is a direct quote of Appendix B, which discusses the issue of kickbacks and other illegal activities. We have made no changes to the text, however, we have chosen to number the illustrations for ease of presentation. The appendix language is as follows:

The following illustrations provide additional guidance on the meaning and coverage of the provisions of RESPA. Other provisions of Federal or state law may also be applicable to the practices and payments discussed in the following illustrations.

Scenario 1:

Facts: A 1 Homes, a provider of settlement services, provides settlement services at abnormally low rates or at no charge at all to John Smith, a builder, in connection with a subdivision being developed by John Smith. John Smith agrees to refer purchasers of the completed homes in the subdivision to A 1 Homes for the purchase of settlement services in connection with the sale of individual lots by John Smith.

Comments: The rendering of services by A 1 Homes to John Smith at little or no charge constitutes a thing of value given by A 1 Homes to John Smith in return for the referral of settlement services business and both A 1 Homes and John Smith are in violation of section 8 of RESPA.

Scenario 2:

Facts: Home Bank, a lender, encourages persons who receive federally related mortgage loans from it to employ Jane Jones, an attorney, to perform title searches and related settlement services in connection with their transaction. Home Bank and Jane Jones have an understanding that in return for the referral of this business Jane Jones provides legal services to Home Bank or Home Bank's officers or employees at abnormally low rates or for no charge.

Comments: Both Jane Jones and Home Bank are in violation of section 8 of RESPA. Similarly, if an attorney gives a portion of his or her fees to another attorney, a lender, a real estate broker, or any other provider of settlement services who had referred prospective clients to the attorney, section 8 would be violated by both persons.

Scenario 3:

Facts: Acme, a real estate broker, obtains all necessary licenses under state law to act as a title insurance agent. Acme refers individuals who are purchasing homes in transactions in which Acme participates as a broker to Smith & Jones, an unaffiliated title company, for the purchase of title insurance services. Acme performs minimal, if any, title services in connection with the issuance of the title insurance policy (such as placing an application with the title company). Smith & Jones pays Acme a commission (or Acme retains a portion of the title insurance premium) for the transactions or alternatively Smith & Jones receives a portion of the premium paid directly from the purchaser.

Comments: The payment of a commission or portion of the title insurance premium by Smith & Jones to Acme, or receipt of a portion of the payment for title insurance under circumstances where no substantial services are being performed by Acme, is a violation of section 8 of RESPA. It makes no difference whether the payment comes from Smith & Jones or the purchaser. The amount of the payment must bear a reasonable relationship to the services rendered. Here Acme really is being compensated for a referral of business to Smith & Jones.

Scenario 4:

Facts: John Johnson is an attorney who, as a part of his legal representation of clients in residential real estate transactions, orders and reviews title insurance policies for his clients. John Johnson enters into a contract with SmithCo, a title company, to be an agent of SmithCo under a program set up by SmithCo. Under the agreement, John Johnson agrees to prepare and forward title insurance applications to SmithCo, to re-examine the preliminary title commitment for accuracy, and, if he chooses, to attempt to clear exceptions to the title policy before closing. John Johnson agrees to assume liability for waiving certain exceptions to title, but never exercises this authority. SmithCo performs the necessary title search and examination work, determines insurability of title, prepares documents containing substantive information in title commitments, handles closings for John Johnson's clients, and issues title policies. John Johnson receives a fee from his client for legal services and an additional fee for his title agent "services" from the client's title insurance premium to SmithCo.

Comments: John Johnson and SmithCo are violating section 8 of RESPA. Here, John Johnson's clients are being double-billed because the work John Johnson performs as a "title agent" is that which he already performs for his client in his capacity as an attorney. For John Johnson to receive a separate payment as a title agent, John Johnson must perform necessary core title work and may not contract out the work. To receive additional compensation as a title agent for this transaction, John Johnson must provide his client with core title agent services for which he assumes liability and which include, at a minimum, the evaluation of the title search to determine insurability of the title and the issuance of a title commitment where customary, the clearance of underwriting objections, and the actual issuance of the policy or policies on behalf of the title company. John Johnson may not be compensated for the mere re- examination of work performed by SmithCo. Here, John Johnson is not performing these services and may not be compensated as a title agent under section 8(c)(1)(B). Referral fees or splits of fees may not be disguised as title agent commissions when the core title agent work is not performed. Further, because SmithCo created the program and gave John Johnson the opportunity to collect fees (a thing of value) in exchange for the referral of settlement service business, it has violated section 8 of RESPA.

Scenario 5:

Facts: HomeMakers, a "mortgage originator," receives loan applications, funds the loans with its own money or with a wholesale line of credit for which HomeMakers is liable, and closes the loans in HomeMakers' own name. Subsequently, SmithCo, a mortgage lender, purchases the loans and compensates HomeMakers for the value of the loans, as well as for any mortgage servicing rights.

Comments: Compensation for the sale of a mortgage loan and servicing rights constitutes a secondary market transaction, rather than a referral fee, and is beyond the scope of section 8 of RESPA. For purposes of section 8, in determining whether a bona fide transfer of the loan

obligation has taken place, HUD examines the real source of funding and the real interest of the named settlement lender.

Scenario 6:

Facts: Acme, a credit reporting company, places a facsimile transmission machine (fax) in the office of HomeHelpers, a mortgage lender, so that HomeHelpers can easily transmit requests for credit reports and Acme can respond. Acme supplies the fax machine at no cost or at a reduced rental rate based on the number of credit reports ordered.

Comments: Either situation violates section 8 of RESPA. The fax machine is a thing of value that Acme provides in exchange for the referral of business from HomeHelpers. Copying machines, computer terminals, printers, or other like items which have general use to the recipient and which are given in exchange for referrals of business also violate RESPA.

Scenario 7:

***Facts*:** A 1 Homes, a real estate broker, refers title business to JonesInc, a company that is a licensed title agent for SmithCo, a title insurance company. A 1 Homes owns more than 1.0 percent of JonesInc. JonesInc performs the title search and examination, makes determinations of insurability, issues the commitment, clears underwriting objections, and issues a policy of title insurance on behalf of SmithCo, for which SmithCo pays JonesInc a commission. JonesInc pays annual dividends to its owners, including A 1 Homes, based on the relative amount of business each of its owners refers to JonesInc.

Comments: The facts involve an affiliated business arrangement. The payments of a commission by SmithCo to JonesInc is not a violation of section 8 of RESPA if the amount of the commission constitutes reasonable compensation for the services performed by JonesInc for SmithCo. The payment of a dividend or the giving of any other thing of value by JonesInc to A 1 Homes that is based on the amount of business referred to JonesInc by A 1 Homes does not meet the affiliated business agreement exemption provisions, and such actions violate section 8. Similarly, if the amount of stock held by A 1 Homes in JonesInc (or, if JonesInc were a partnership, the distribution of partnership profits by JonesInc to A 1 Homes) varies based on the amount of business referred or expected to be referred, or if JonesInc retained any funds for subsequent distribution to A 1 Homes where such funds were generally in proportion to the amount of business A 1 Homes referred to JonesInc relative to the amount referred by other owners, such arrangements would violate section 8. The exemption for affiliated business arrangements would not be available because the payments here would not be considered returns on ownership interests. Further, the required disclosure of the affiliated business arrangement and estimated charges have not been provided.

Scenario 8:

Facts: Same as illustration 7, but JonesInc pays annual dividends in proportion to the amount of stock held by its owners, including A 1 Homes, and the distribution of annual dividends is not based on the amount of business referred or expected to be referred.

Comments: If A 1 Homes and JonesInc meet the requirements of the affiliated business arrangement exemption, there is not a violation of RESPA. Since the payment is a return on ownership interests, A 1 Homes and JonesInc will be exempt from section 8 if (1) A 1 Homes also did not require anyone to use the services of JonesInc and (2) A 1 Homes disclosed its ownership interest in JonesInc on a separate disclosure form and provided an estimate of JonesInc's charges to each person referred by A 1 Homes to JonesInc and (3) JonesInc makes no payment (nor is there any other thing of value exchanged) to A 1 Homes other than dividends.

Scenario 9:

Facts: SmithCo, a franchisor for franchised real estate brokers, owns True Blue, a provider of settlement services. HomeMakers, a franchisee of SmithCo, refers business to True Blue.

Comments: This is an affiliated business arrangement. SmithCo, True Blue, and HomeMakers will all be exempt from section 8 if HomeMakers discloses its franchise relationship with the owner of True Blue on a separate disclosure form and provides an estimate of True Blue's charges to each person referred to True Blue; HomeMakers does not require anyone to use True Blue's services; SmithCo gives nothing of value to HomeMakers under the franchise agreement (such as an adjusted level of franchise payment based on the referrals); and True Blue makes no payments to SmithCo other than dividends representing a return on ownership interest (rather than, e.g., an adjusted level of payment being based on the referrals). Nor may True Blue pay HomeMakers anything of value for the referral.

Scenario 10:

Facts: XYZ Homes is a real estate broker who refers business to its affiliate title company Smith Title. XYZ Homes makes all required written disclosures to the home buyer of the arrangement and estimated charges, and the home buyer is not required to use Smith Title. Smith Title refers or contracts out business to JonesInc, who does all the title work and splits the fee with Smith Title. Smith Title passes its fee to XYZ Homes in the form of dividends, a return on ownership interest.

Comments: The relationship between XYZ Homes and Smith Title is an affiliated business arrangement. However, the affiliated business arrangement exemption does not provide exemption between an affiliated entity, Smith Title, and a third-party, JonesInc. Here, Smith Title is a mere "shell" and provides no substantive services for its portion of the fee. The arrangement between Smith Title and JonesInc would be in violation of section 8(a) and (b). Even if Smith Title had an affiliate relationship with JonesInc, the required exemption criteria have not been met and the relationship would be subject to section 8.

Scenario 11:

Facts: Acme, a mortgage lender, is affiliated with Titles R Us, a title company, and Ess Cro, an escrow company, and offers consumers a package of mortgage, title, and escrow services at a discount from the prices at which such services would be sold if purchased separately. Acme, Titles R Us, and Ess Cro are subsidiaries of BrownCo, a holding company, which also controls a retail stock brokerage firm, StockUp. None of Acme, Titles R Us, or Ess Cro requires consumers to purchase the services of its sister companies, and each company sells such services separately

and as part of the package. Acme also pays an employee, Tim Taylor, a full-time bank teller who does not perform settlement services, a bonus for each loan, title insurance binder, or closing that Tim Taylor generates for Acme, Titles R Us, or Ess Cro. Acme pays Tim Taylor these bonuses out of Acme's own funds and receives no reimbursements for these bonuses from Titles R Us, Ess Cro, or BrownCo. At the time that Tim Taylor refers customers to Titles R Us and Ess Cro, Tim Taylor provides the customers with a disclosure using the Affiliated Business Arrangement Disclosure format. Also, Sandra Sanders, a stockbroker employee of StockUp, occasionally refers her customers to Acme, Titles R Us, or Ess Cro; gives a statement in the Affiliated Business Arrangement Disclosure format; and receives a payment from StockUp for each referral.

***Comments**:* Selling a package of settlement services at a discount is not prohibited by RESPA, consistent with the definition of "required use" in 12 C.F.R. § 1024.2. Also, Acme is always allowed to compensate its own employees for business generated for Acme's company. Here, Acme may also compensate Tim Taylor, an employee who does not perform settlement services in this or any transaction, for referring business to a business entity in an affiliate relationship with Acme. Sandra Sanders, who does not perform settlement services in this or any transaction, can also be compensated by StockUp, but not by anyone else. Employees who perform settlement services cannot be compensated for referrals to other settlement service providers. None of the entities in an affiliated relationship with each other may pay for referrals received from an affiliate's employees. Sections 1024.15(b)(3)(i)(A) and (B) set forth the permissible exchanges of funds between controlled business entities. In all circumstances described a statement in the Affiliated Business Arrangement Disclosure format must be provided to a potential consumer at or before the time that the referral is made.

Scenario 12:

***Facts**:* DandyDeals, a real estate broker, is affiliated with Smith Title, a mortgage lender, and JonesInc, a title agency. DandyDeals employs Ron Rogers to advise and assist any customers of DandyDeals who have executed sales contracts regarding mortgage loans and title insurance. Ron Rogers collects and transmits (by computer, fax, mail, or other means) loan applications or other information to Smith Title and JonesInc for processing. DandyDeals pays Ron Rogers a small salary and a bonus for every loan closed with Smith Title or title insurance issued with JonesInc. Ron Rogers furnishes the Affiliated Business Arrangement Disclosure to consumers at the time of each referral. Ron Rogers receives no other compensation from the real estate or mortgage transaction and performs no settlement services in any transaction. At the end of each of DandyDeals's fiscal years, Sandra Sanders, a managerial employee of DandyDeals, receives a $1,000 bonus if 20 percent of the consumers who purchase a home through DandyDeals close a loan on the home with Smith Title and have the title issued by JonesInc. During the year, Sandra Sanders acted as a real estate agent for her neighbor and received a real estate sales commission for selling her neighbor's home.

Comments: Employers may pay their own bona fide employees for generating business for their employer (1024.14(g)(1)(vii)). Employers may also pay their own bona fide employees for generating business for their affiliate business entities (1024.14(g)(1)(ix)), as long as the employees do not perform settlement services in any transaction and disclosure is made. This permits a company to employ a person whose primary function is to market the employer's or its affiliate's settlement services (frequently referred to as a financial services representative, or FSR). An FSR may not perform any settlement services including, for example, those services of

a real estate agent, loan processor, settlement agent, attorney, or mortgage broker. In accordance with the terms of the exemption at 1024.14(g)(1)(ix), the marketing of a settlement service or product of an affiliated entity, including the collection and conveyance of information or the taking of an application or order for the services of an affiliated entity, does not constitute the performance of a settlement service. Under the exemption, marketing of a settlement service or product also may include incidental communications with the consumer after the application or order, such as providing the consumer with information about the status of an application or order; marketing may not include serving as the ongoing point of contact for coordinating the delivery and provision of settlement services.

Thus, in the circumstances described, Ron Rogers and Sandra Sanders may receive the additional compensation without violating RESPA. Also, employers may pay managerial employees compensation in the form of bonuses based on a percentage of transactions completed by an affiliated company (frequently called a "capture rate"), as long as the payment is not directly calculated as a multiple of the number or value of the referrals. 12 C.F.R. § 1024.14(g)(1)(viii). A managerial employee who receives compensation for performing settlement services in three or fewer transactions in any calendar year "does not routinely" deal directly with the consumer and is not precluded from receiving managerial compensation.

Scenario 13:

Facts: Xenith is a mortgage broker who provides origination services to submit a loan to a lender for approval. The mortgage broker charges the borrower a uniform fee for the total origination services, as well as a direct up-front charge for reimbursement of credit reporting, appraisal services, or similar charges.

Comments: The mortgage broker's fee must be itemized in the Good Faith Estimate and on the HUD-1 Settlement Statement. Other charges which are paid for by the borrower and paid in advance are listed as "P.O.C." on the HUD-1 Settlement Statement, and they reflect the actual provider charge for such services. Also, any other fee or payment received by the mortgage broker from either the lender or the borrower arising from the initial funding transaction, including a servicing release premium or yield spread premium, is to be noted on the Good Faith Estimate and listed in the 800 series of the HUD-1 Settlement Statement.

Scenario 14:

Facts: Handy Helpers is a dealer in home improvements who has established funding arrangements with several lenders. Customers for home improvements receive a proposed contract from Handy Helpers. The proposal requires that customers both execute forms authorizing a credit check and employment verification and, frequently, execute a dealer consumer credit contract secured by a lien on the customer's (borrower's) one to four family residential property. Simultaneously with the completion and certification of the home improvement work, the note is assigned by the dealer to a funding lender.

***Comments*:** The loan that is assigned to the funding lender is a loan covered by RESPA, when a lien is placed on the borrower's one- to four family residential structure. The dealer loan or consumer credit contract originated by a dealer is also a RESPA-covered transaction, except when the dealer is not a "creditor" under the definition of "federally related mortgage loan" in 1024.2. The lender to whom the loan will be assigned is responsible for assuring that the lender

or the dealer delivers to the borrower a Good Faith Estimate of closing costs consistent with Regulation X, and that the HUD-1 or HUD-1A Settlement Statement is used in conjunction with the settlement of the loan to be assigned. A dealer who, under 1024.2, is covered by RESPA as a creditor is responsible for the Good Faith Estimate of closing costs and the use of the appropriate settlement statement in connection with the loan.

Section 9: Summary of Applicable Disclosure Requirements

Use TILA–RESPA Integrated Disclosures (See Regulation Z)	***Continue to use existing TIL, RESPA Disclosures (as applicable)***
• most closed-end mortgage loans, including o construction-only loans o loans secured by vacant land or by 25 or more acres	• HELOCs (subject to disclosure requirements under Regulation Z, 12 CFR 1026.40) • reverse mortgages (subject to existing TIL and GFE disclosures) • chattel-secured mortgages (i.e., mortgages secured by a mobile home or by a dwelling that is not attached to real property, such as land) (subject to existing TIL disclosures, and not RESPA)
But note: In both cases, there is a partial exemption from these disclosures under 12 CFR 1026.3(h) for loans secured by subordinate liens and associated with certain housing assistance loan programs for low-and moderate-income persons. Note: Open-end reverse mortgages receive open-end disclosures, rather than GFEs or HUD-1s.	

Source: Adapted from the Federal Reserve Board RESPA Examination Procedures. An almost identical version of this chart appears in the FDIC RESPA Examination Procedures.

RESPA General Issues

Section 10: Relation to State Law [12 C.F.R § 1024.13]

Relation to State Law [12 C.F.R § 1024.13]

Synopsis

RESPA does not annul, alter, affect, or exempt any person subject to the provisions of RESPA from complying with the laws of any state with respect to settlement practices, except to the extent that those laws are inconsistent with any provision of this act, and then only to the extent of the inconsistency. The CFPB is authorized to determine whether such inconsistencies exist.

The CFPB may not determine that any state law is inconsistent with any provision of this act if the CFPB determines that such law gives greater protection to the consumer. In making these determinations, the CFPB must consult with the appropriate federal agencies.

A determination by the CFPB that such an inconsistency exists will be made, after consultation with appropriate federal agencies, by publication of a notice in the *Federal Register*.

Regulatory Text - Relation to State Law [12 CFR § 1024.13]

(a) State laws that are inconsistent with RESPA or this part are preempted to the extent of the inconsistency. However, RESPA and these regulations do not annul, alter, affect, or exempt any person subject to their provisions from complying with the laws of any state with respect to settlement practices, except to the extent of the inconsistency.

(b) Upon request by any person, the Bureau is authorized to determine if inconsistencies with state law exist; in doing so, the Bureau shall consult with appropriate Federal agencies.

(1) The Bureau may not determine that a state law or regulation is inconsistent with any provision of RESPA or this part, if the Bureau determines that such law or regulation gives greater protection to the consumer.

(2) In determining whether provisions of state law or regulations concerning affiliated business arrangements are inconsistent with RESPA or this part, the Bureau may not construe those provisions that impose more stringent limitations on affiliated business arrangements as inconsistent with RESPA so long as they give more protection to consumers and/or competition.

(c) Any person may request the Bureau to determine whether an inconsistency exists by submitting to the address indicated in §1024.2 (Editor's Note: the address is found under the definition of "Public Guidance Documents"), a copy of the state law in question, any other law or judicial or administrative opinion that implements, interprets or applies the relevant provision, and an explanation of the possible inconsistency. A determination by the Bureau that an inconsistency with state law exists will be made by publication of a notice in the Federal Register. "Law" as used in this section includes regulations and any enactment which has the force and effect of law and is issued by a state or any political subdivision of a State.

(d) A specific preemption of conflicting State laws regarding notices and disclosures of mortgage servicing transfers is set forth in § 1024.33(d).

Regulatory Commentary [12 CFR § 1024.13]

The regulation does not offer any commentary on this section.

Section 11: Title Companies [12 C.F.R § 1024.16]

Synopsis

No seller of property that will be purchased with the assistance of a federally related mortgage loan may violate section 9 of RESPA. Section 9 prohibits a seller of property that will be purchased with the assistance of a "federally related mortgage loan" from requiring (directly or indirectly), as a condition of selling the property, that title insurance covering the property be purchased by the buyer from any particular title company. Section 1024.2 of CFPB's Regulation X defines "required use" of a provider of a settlement service.

Regulatory Text - Title companies [12 C.F.R § 1024.16]

Title Companies. *No seller of property that will be purchased with the assistance of a federally related mortgage loan shall violate section 9 of RESPA (12 U.S.C. 2608). Section 1024.2 defines "required use" of a provider of a settlement service.*

Regulatory Commentary [12 C.F.R § 1024.16]

The regulation does not offer any commentary on this section.

Disclosures at Application

Section 12: Special Information Booklet [12 C.F.R. § 1024.6]

Synopsis – Settlement Costs Booklet – Closed End Purchases

A financial institution must provide a copy of this booklet whenever it receives a written application for a purchase money loan. Only one booklet needs to be provided per application. The booklet must be provided by delivering it or placing it in the mail to the applicant within three business days after the application is received. If the loan is declined before the end of the three business day period, no special information booklet is required.

If a mortgage broker has already delivered this booklet, the lender does not need to do so.

At the present time, the Settlement Cost Booklet that is most likely used for this requirement is the CFPB's version that follows the TRID rules. It is called **"*Shopping for Your Home Loan: Settlement Cost Booklet*."** Even though the industry views this booklet as a part of the TRID rules, the CFPB lists this booklet under RESPA.

The ***"Settlement Cost Booklet"*** is still required for loan types not covered by TRID. As the average institution is not going to be originating any loans that are subject to RESPA and not TRID, most institutions will decide either not to retain any copies of this booklet, or to simply have a few available "just in case."

No booklets are required for:

- Refinancings.
- Closed-end junior lien loans.
- Reverse mortgages.
- Any other loan that does not involve the purchase of a 1-4 family residential property.

When Your Home is On the Line – Open End Credit

If the application is for an open-end credit plan (typically a HELOC), a lender or mortgage broker must provide **"When Your Home is On the Line"** within 3 days of application. If the loan is denied prior to the expiration of three days, the booklet does not need to be provided.

Delivery Matrix

The following page sets forth the delivery matrix for these booklets.

Situation	Bank Response	Timing or Other Issues
Application taken in person	Bank provides one copy of booklet to any of the applicants.	Must be given at application or mailed within three days to the address of one of the applicants.
Application not taken in person	Bank provides one copy of booklet to any of the applicants.	Mail within three days to the address of one of the applicants.
Application taken by a third party (a broker, for instance) in person	Broker or other third party provides one copy of booklet to any of the applicants.	Must be given at application or mailed within three days to the address of one of the applicants.
Application not taken in person by a third party (i.e. broker)	Broker or other third party, or bank provides one copy of booklet to any of the applicants.	Mail within three days to the address of one of the applicants.
Application taken, denied and adverse action sent within three business days of application	No requirement to provide the booklet to any applicant.	Adverse action notice should be mailed within three business days of application.
Application taken, denied and adverse action NOT sent within three business days of application	Bank provides one copy of booklet to any of the applicants.	Delaying the provision of the adverse action notice until after the three business-day period likely will require provision of the booklet as detailed above.

Revision and Reproduction

The CFPB may from time to time revise any of these booklets by publishing a notice in the *Federal Register*.

As most financial institutions purchase the booklets from third party providers, or are using electronic copies from the internet, we have elected to omit any discussion of revision and reproduction. The regulatory text and commentary below provide further information on these subjects.

Regulatory Text – Special Information Booklet [12 CFR § 1024.6]

(a) ***Lender to provide special information booklet.*** *Subject to the exceptions set forth in this paragraph, the lender shall provide a copy of the special information booklet to a person from whom the lender receives, or for whom the lender prepares, a written application for a federally related mortgage loan. When two or more persons apply together for a loan, the lender is in compliance if the lender provides a copy of the booklet to one of the persons applying.*

(1) The lender shall provide the special information booklet by delivering it or placing it in the mail to the applicant not later than three business days (as that term is defined in §1024.2) after the application is received or prepared. However, if the lender denies the borrower's application for credit before the end of the three-business-day period, then the lender need not provide the booklet to the borrower. If a borrower uses a mortgage broker, the mortgage broker shall distribute the special information booklet and the lender need not do so. The intent of this provision is that the applicant receive the special information booklet at the earliest possible date.

(2) In the case of a federally related mortgage loan involving an open-ended credit plan, as defined in Regulation Z, 12 CFR 1026.2(a)(20), a lender or mortgage broker that provides the borrower with a copy of the brochure entitled "When Your Home is On the Line: What You Should Know About Home Equity Lines of Credit", or any successor brochure issued by the Bureau, is deemed to be in compliance with this section.

(3) In the categories of transactions set forth at the end of this paragraph, the lender or mortgage broker does not have to provide the booklet to the borrower. Under the authority of section 19(a) of RESPA (12 U.S.C. 2617(a)), the Bureau may issue a revised or separate special information booklet that deals with these transactions, or the Bureau may choose to endorse the forms or booklets of other Federal agencies. In such an event, the requirements for delivery by lenders and the availability of the booklet or alternate materials for these transactions will be set forth in a Notice in the FEDERAL REGISTER. This paragraph shall apply to the following transactions:

(i) Refinancing transactions;

(ii) Closed-end loans, as defined in 12 CFR 1026.2(a)(10) of Regulation Z, when the lender takes a subordinate lien;

(iii) Reverse mortgages; and

(iv) Any other federally related mortgage loan whose purpose is not the purchase of a 1- to 4-family residential property.

(b) ***Revision.*** *The Bureau may from time to time revise the special information booklet, publishing a notice in the FEDERAL REGISTER.*

(c) ***Reproduction.*** *The special information booklet may be reproduced in any form, provided that no change is made other than as provided under paragraph (d) of this section. The special information booklet may not be made a part of a larger document for purposes of distribution under RESPA and this section. Any color, size and quality of paper, type of print, and method of reproduction may be used so long as the booklet is clearly legible.*

(d) ***Permissible changes.***

(1)

(i) No changes to, deletions from, or additions to the special information booklet currently prescribed by the Bureau shall be made other than the permissible changes specified in paragraphs (d)(1)(ii) through (d)(3) of this section or changes as otherwise approved in writing by the Bureau in accordance with the procedures described in this paragraph. A request to the Bureau for approval of any changes other than the permissible changes specified in paragraphs (d)(1)(ii) through (d)(3) of this section shall be submitted in writing to the address indicated in §1024.3, stating the reasons why the applicant believes such changes, deletions or additions are necessary.

(ii)

(A) In the Complaints section of the booklet, it is a permissible change to substitute "the Bureau of Consumer Financial Protection" for "HUD's Office of RESPA" and "the RESPA office."

(B) In the Avoiding Foreclosure section of the booklet, it is a permissible change to inform homeowners that they may find information on and assistance in avoiding foreclosures at http://www.consumerfinance.gov. The deletion of the reference to the HUD Web page, http://www.hud.gov/foreclosure/, in the Avoiding Foreclosure section of the booklet is not a permissible change.

(C) In the appendix to the booklet, it is a permissible change to substitute "the Bureau of Consumer Financial Protection" for the reference to the "Board of Governors of the Federal Reserve System" in the No Discrimination section of the appendix to the booklet. In the Contact Information section of the appendix to the booklet, it is a permissible change to add the following contact information for the Bureau: "Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20006; www.consumerfinance.gov/learnmore". It is also a permissible change to remove the contact information for HUD's Office of RESPA and Interstate Land Sales from the Contact Information section of the appendix to the booklet.

(2) The cover of the booklet may be in any form and may contain any drawings, pictures or artwork, provided that the words "settlement costs" are used in the title. Names, addresses and telephone numbers of the lender or others and similar information may appear on the cover, but no discussion of the matters covered in the booklet shall appear on the cover. References to HUD on the cover of the booklet may be changed to references to the Bureau.

(3) The special information booklet may be translated into languages other than English.

Regulatory Commentary [12 CFR § 1024.6]

The regulation does not offer any commentary for this section.

Section 13: Servicing Disclosure [12 CFR § 1024.32] and [12 CFR § 1024.33(a)]

Synopsis – Servicing Disclosure Statement: Requirements

At the time an application for a first lien RESPA required loan is submitted, or within three business days after submission of the application, the consumer must be provided a Servicing Disclosure Statement. The specific language of the Servicing Disclosure Statement is not required to be used, but the information must be clearly defined.

The Servicing Disclosure Statement must indicate whether the servicing of the loan may be assigned, sold, or transferred. Using the specific language in the sample notice appears appropriate.

Specific Requirements

- Not required for TRID loans (built into the Loan Estimate)
- Clear and conspicuous
- In writing
- In a form the consumer may keep
- May be provided electronically in compliance with the E-Sign Act
- May be in other languages as long as English disclosures are available

Servicing Disclosure Statement: Delivery

The disclosure must be given within three business days from receipt of the application by hand delivery, by placing it in the mail, or, if the applicant agrees, by fax, e-mail, or other electronic means. In the event the borrower is denied credit within the three business-day period, no servicing disclosure statement is required to be delivered.

If co-applicants indicate the same address on their application, one copy delivered to that address is sufficient. If different addresses are shown by co-applicants on the application, a copy must be delivered to each of the co-applicants. Note that TRID loans may be subject to this rule if the loan is also subject to RESPA.

Regulatory Text – Servicing Disclosure General Requirements [12 CFR § 1024.32]

(a) ***Disclosure requirements.***

(1) ***Form of disclosures****. Except as otherwise provided in this subpart, disclosures required under this subpart must be clear and conspicuous, in writing, and in a form that a recipient may keep. The disclosures required by this subpart may be provided in electronic form, subject to compliance with the consumer consent and other applicable provisions of the E-Sign Act, as set forth in §1024.3. A servicer may use commonly accepted or readily understandable abbreviations in complying with the disclosure requirements of this subpart.*

(2) ***Foreign language disclosures****. Disclosures required under this subpart may be made in a language other than English, provided that the disclosures are made available in English upon a recipient's request.*

(b) ***Additional information; disclosures required by other laws.*** *Unless expressly prohibited in this subpart, by other applicable law, such as the Truth in Lending Act (15 U.S.C. 1601 et seq.) or the Truth in Savings Act (12 U.S.C. 4301 et seq.), or by the terms of an agreement with a Federal or State regulatory agency, a servicer may include additional information in a disclosure required under this subpart or combine any disclosure required under this subpart with any disclosure required by such other law.*

Regulatory Commentary – Servicing Disclosure General Requirements [12 CFR § 1024.32]

The regulation does not offer any commentary for this section.

Regulatory Text – Servicing Disclosure Statement [12 CFR § 1024.33(a)]

(a) ***Servicing disclosure statement.*** *Within three days (excluding legal public holidays, Saturdays, and Sundays) after a person applies for a first-lien mortgage loan, the lender, mortgage broker who anticipates using table funding, or dealer in a first-lien dealer loan shall provide to the person a servicing disclosure statement that states whether the servicing of the mortgage loan may be assigned, sold, or transferred to any other person at any time. Appendix MS-1 of this part contains a model form for the disclosures required under this paragraph (a). If a person who applies for a first-lien mortgage loan is denied credit within the three-day period, a servicing disclosure statement is not required to be delivered.*

Regulatory Commentary – Servicing Disclosure Statement [12 CFR § 1024.33(a)]

33(a) Servicing disclosure statement.

(1) ***Terminology****. Although the servicing disclosure statement must be clear and conspicuous pursuant to §1024.32(a), §1024.33(a) does not set forth any specific rules for the format of the statement, and the specific language of the servicing disclosure statement in Appendix MS-1 is not required to be used. The model format may be supplemented with additional information that clarifies or enhances the model language.*

(2) ***Delivery to co-applicants****. If co-applicants indicate the same address on their application, one copy delivered to that address is sufficient. If different addresses are shown by co-applicants on the application, a copy must be delivered to each of the co-applicants.*

(3) ***Lender servicing****. If the lender, mortgage broker who anticipates using table funding, or dealer in a first lien dealer loan knows at the time of making the disclosure whether it will service the mortgage loan for which the applicant has applied, the disclosure must, as applicable, state that such entity will service such loan and does not intend to sell, transfer, or assign the servicing of the loan, or that such entity intends to assign, sell, or transfer servicing of such mortgage loan before the first payment is due. In all other instances, a disclosure that states that the servicing of the loan may be assigned, sold, or transferred while the loan is outstanding complies with §1024.33(a).*

Appendix MS–1 to Part 1024

[Sample language; use business stationary or similar heading]

[Date]

SERVICING DISCLOSURE STATEMENT NOTICE TO FIRST LIEN MORTGAGE LOAN APPLICANTS: THE RIGHT TO COLLECT YOUR MORTGAGE LOAN PAYMENTS MAY BE TRANSFERRED

You are applying for a mortgage loan covered by the Real Estate Settlement Procedures Act (RESPA) (12 U.S.C. 2601 et seq.). RESPA gives you certain rights under Federal law. This statement describes whether the servicing for this loan may be transferred to a different loan servicer. "Servicing" refers to collecting your principal, interest, and escrow payments, if any, as well as sending any monthly or annual statements, tracking account balances, and handling other aspects of your loan. You will be given advance notice before a transfer occurs.

Servicing Transfer Information

[ ] We may assign, sell, or transfer the servicing of your loan while the loan is outstanding.

[or]

[ ] We do not service mortgage loans of the type for which you applied. We intend to assign, sell, or transfer the servicing of your mortgage loan before the first payment is due.

[or]

[ ] The loan for which you have applied will be serviced at this financial institution and we do not intend to sell, transfer, or assign the servicing of the loan.

[INSTRUCTIONS TO PREPARER: Insert the date and select the appropriate language under "Servicing Transfer Information." The model format may be annotated with further information that clarifies or enhances the model language.]

FDIC Examination Procedures – Servicing Disclosure

The FDIC examination procedures will be discussed in the Servicing Transfer section of this manual.

Section 14: Affiliated Business Arrangements [12 C.F.R § 1024.15]

Synopsis – Definitions Regarding Affiliated Business Arrangements

There are specific definitions for affiliated business arrangements. They are located in the regulatory text below. Care should be taken to understand these definitions to assure compliance with this section.

Section 8 Violation

Any violation of this section is a violation of section 8 of RESPA and is subject to enforcement actions. Any person who violates this section will be sanctioned accordingly.

An affiliated business arrangement is an arrangement in which:

- A person who is in a position to refer settlement service business involving a federally related mortgage loan, or an associate of such person, has either an affiliate relationship with or a direct or beneficial ownership interest of more than 1.0 percent in a provider of settlement services and
- The person directly or indirectly refers business to that provider or affirmatively influences the selection of that provider.

Violation and Exemption

An affiliated business arrangement is NOT a violation of section 8 of RESPA (12 U.S.C. § 2607) and of section 1024.14 if the following conditions are satisfied:

- Prior to the referral, the person making a referral has provided to each person whose business is referred a written disclosure in the format of the Affiliated Business Arrangement Disclosure Statement.
- This disclosure shall specify the nature of the relationship (explaining the ownership and financial interest) between the person performing settlement services (or business incident thereto) and the person making the referral, and shall describe the estimated charge or range of charges (using the same terminology, as far as practical, as section L of the HUD-1 or HUD-1A Settlement Statement) generally made by the provider of settlement services.
- The disclosure must be provided on a separate piece of paper no later than the time of each referral.
    - If the lender requires the use of a particular provider, the disclosure must be provided at the time of loan application and may be satisfied at the time that the Good Faith Estimate is provided.

- Whenever an attorney or law firm requires a client to use a particular title insurance agent, the attorney or law firm shall provide the disclosures no later than the time the attorney or law firm is engaged by the client. Failure to comply with the disclosure requirements of this section may be overcome if the person making a referral can prove by a preponderance of the evidence that procedures reasonably adopted to result in compliance with these conditions have been maintained and that any failure to comply with these conditions was unintentional and the result of a bona fide error. (An error of legal judgment with respect to a person's obligations under RESPA is not a bona fide error.)

- No person making a referral has required any person to use any particular provider of settlement services or business incident thereto, except if such person is a lender, for requiring a buyer, borrower, or seller to pay for the services of an attorney, credit reporting agency, or real estate appraiser chosen by the lender to represent the lender's interest in a real estate transaction, or except if such person is an attorney or law firm for arranging for issuance of a title insurance policy for a client, directly as agent or through a separate corporate title insurance agency that may be operated as an adjunct to the law practice of the attorney or law firm, as part of representation of that client in a real estate transaction.

- The only thing of value that is received from the arrangement other than permissible payments previously listed is a return on an ownership interest or franchise relationship.
  - In an affiliated business arrangement
    - Bona fide dividends and capital or equity distributions related to ownership interest or franchise relationship between entities in an affiliate relationship are permissible; and
    - Bona fide business loans, advances, and capital or equity contributions between entities in an affiliate relationship (in any direction) are not prohibited, as long as they are for ordinary business purposes and are not fees for the referral of settlement service business or unearned fees.
  - A return on an ownership interest does not include
    - Any payment which has as a basis of calculation no apparent business motive other than distinguishing among recipients of payments on the basis of the amount of their actual, estimated, or anticipated referrals;
    - Any payment which varies according to the relative amount of referrals by the different recipients of similar payments; or
    - A payment based on an ownership, partnership, or joint venture share which has been adjusted on the basis of previous relative referrals by recipients of similar payments.
  - Neither the mere labeling of a thing of value nor the fact that it may be calculated pursuant to a corporate or partnership organizational document or a franchise agreement will determine whether it is a bona fide return on an ownership interest or franchise relationship. Whether a thing of value is such a return will be determined by analyzing facts and circumstances on a case-by-case basis.
  - A return on franchise relationship may be a payment to or from a franchisee but it does not include any payment which is not based on the franchise agreement, nor any payment which varies according to the number or amount of referrals by the franchisor or franchisee or which is based on a franchise agreement which has been adjusted on

the basis of a previous amount or number of referrals by the franchisor or franchisee. A franchise agreement may not be constructed to insulate against kickbacks or referral fees.

Regulatory Text – Affiliated Business Arrangements [12 CFR § 1024.15]

*(a) **General.** An affiliated business arrangement is defined in section 3(7) of RESPA (12 U.S.C. 2602(7)).*

*(b) **Violation and exemption.** An affiliated business arrangement is not a violation of section 8 of RESPA (12 U.S.C. 2607) and of §1024.14 if the conditions set forth in this section are satisfied. Paragraph (b)(1) of this section shall not apply to the extent it is inconsistent with section 8(c)(4)(A) of RESPA (12 U.S.C. 2607(c)(4)(A)).*

(1) The person making each referral has provided to each person whose business is referred a written disclosure, in the format of the Affiliated Business Arrangement Disclosure Statement set forth in Appendix D of this part, of the nature of the relationship (explaining the ownership and financial interest) between the provider of settlement services (or business incident thereto) and the person making the referral and of an estimated charge or range of charges generally made by such provider (which describes the charge using the same terminology, as far as practical, as section L of the HUD-1 settlement statement). The disclosures must be provided on a separate piece of paper no later than the time of each referral or, if the lender requires use of a particular provider, the time of loan application, except that:

(i) Where a lender makes the referral to a borrower, the condition contained in paragraph (b)(1) of this section may be satisfied at the time that the good faith estimate or a statement under §1024.7(d) is provided; and

(ii) Whenever an attorney or law firm requires a client to use a particular title insurance agent, the attorney or law firm shall provide the disclosures no later than the time the attorney or law firm is engaged by the client.

(iii) Failure to comply with the disclosure requirements of this section may be overcome if the person making a referral can prove by a preponderance of the evidence that procedures reasonably adopted to result in compliance with these conditions have been maintained and that any failure to comply with these conditions was unintentional and the result of a bona fide error. An error of legal judgment with respect to a person's obligations under RESPA is not a bona fide error. Administrative and judicial interpretations of section 130(c) of the Truth in Lending Act shall not be binding interpretations of the preceding sentence or section 8(d)(3) of RESPA (12 U.S.C. 2607(d)(3)).

(2) No person making a referral has required (as defined in §1024.2, "required use") any person to use any particular provider of settlement services or business incident thereto, except if such person is a lender, for requiring a buyer, borrower or seller to pay for the services of an attorney, credit reporting agency, or real estate appraiser chosen by the lender to represent the lender's interest in a real estate transaction, or except if such person is an attorney or law firm for arranging for issuance of a title insurance policy for a client, directly as agent or through a

separate corporate title insurance agency that may be operated as an adjunct to the law practice of the attorney or law firm, as part of representation of that client in a real estate transaction.

(3) The only thing of value that is received from the arrangement other than payments listed in §1024.14(g) is a return on an ownership interest or franchise relationship.

(i) In an affiliated business arrangement:

(A) ***Bona fide*** *dividends, and capital or equity distributions, related to ownership interest or franchise relationship, between entities in an affiliate relationship, are permissible; and*

(B) ***Bona fide*** *business loans, advances, and capital or equity contributions between entities in an affiliate relationship (in any direction), are not prohibited—so long as they are for ordinary business purposes and are not fees for the referral of settlement service business or unearned fees.*

(ii) A return on an ownership interest does not include:

(A) Any payment which has as a basis of calculation no apparent business motive other than distinguishing among recipients of payments on the basis of the amount of their actual, estimated or anticipated referrals;

(B) Any payment which varies according to the relative amount of referrals by the different recipients of similar payments; or

(C) A payment based on an ownership, partnership or joint venture share which has been adjusted on the basis of previous relative referrals by recipients of similar payments.

(iii) Neither the mere labeling of a thing of value, nor the fact that it may be calculated pursuant to a corporate or partnership organizational document or a franchise agreement, will determine whether it is a bona fide return on an ownership interest or franchise relationship. Whether a thing of value is such a return will be determined by analyzing facts and circumstances on a case by case basis.

(iv) A return on franchise relationship may be a payment to or from a franchisee but it does not include any payment which is not based on the franchise agreement, nor any payment which varies according to the number or amount of referrals by the franchisor or franchisee or which is based on a franchise agreement which has been adjusted on the basis of a previous number or amount of referrals by the franchiser or franchisees. A franchise agreement may not be constructed to insulate against kickbacks or referral fees.

(c) ***Definitions.*** *As used in this section:*

Associate *is defined in section 3(8) of RESPA (12 U.S.C. 2602(8)).*

Affiliate relationship *means the relationship among business entities where one entity has effective control over the other by virtue of a partnership or other agreement or is under common*

control with the other by a third entity or where an entity is a corporation related to another corporation as parent to subsidiary by an identity of stock ownership.

***Beneficial ownership** means the effective ownership of an interest in a provider of settlement services or the right to use and control the ownership interest involved even though legal ownership or title may be held in another person's name.*

***Control**, as used in the definitions of "associate" and "affiliate relationship," means that a person:*

(i) Is a general partner, officer, director, or employer of another person;

(ii) Directly or indirectly or acting in concert with others, or through one or more subsidiaries, owns, holds with power to vote, or holds proxies representing, more than 20 percent of the voting interests of another person;

(iii) Affirmatively influences in any manner the election of a majority of the directors of another person; or

(iv) Has contributed more than 20 percent of the capital of the other person.

***Direct ownership** means the holding of legal title to an interest in a provider of settlement service except where title is being held for the beneficial owner.*

***Franchise** is defined in FTC regulation 16 CFR 436.1(h).*

***Franchisor** is defined in FTC regulation 16 CFR 436.1(k).*

***Franchisee** is defined in FTC regulation 16 CFR 436.1(i).*

***FTC** means the Federal Trade Commission.*

***Person who is in a position to refer settlement service business** means any real estate broker or agent, lender, mortgage broker, builder or developer, attorney, title company, title agent, or other person deriving a significant portion of his or her gross income from providing settlement services.*

*(d) **Recordkeeping**. Any documents provided pursuant to this section shall be retained for 5 years after the date of execution.*

*(e) **Appendix B of this part**. Illustrations in Appendix B of this part demonstrate some of the requirements of this section.*

Appendix D to Part 1024

Affiliated Business Arrangement Disclosure Statement Format Notice

To: _____ Property: _____

From: _____ Date: _____

(Entity Making Statement)

This is to give you notice that [***referring party***] has a business relationship with [***settlement services provider(s)***]. [Describe the nature of the relationship between the referring party and the provider(s), including percentage of ownership interest, if applicable.] Because of this relationship, this referral may provide [***referring party***] a financial or other benefit.

[A] Set forth below is the estimated charge or range of charges for the settlement services listed. You are NOT required to use the listed provider(s) as a condition for [settlement of your loan on] [or] [purchase, sale, or refinance of] the subject property. THERE ARE FREQUENTLY OTHER SETTLEMENT SERVICE PROVIDERS AVAILABLE WITH SIMILAR SERVICES. YOU ARE FREE TO SHOP AROUND TO DETERMINE THAT YOU ARE RECEIVING THE BEST SERVICES AND THE BEST RATE FOR THESE SERVICES.

[***provider and settlement service***]	[***charge or range of charges***]
_____	_____
_____	_____
_____	_____

[B] Set forth below is the estimated charge or range of charges for the settlement services of an attorney, credit reporting agency, or real estate appraiser that we, as your lender, will require you to use, as a condition of your loan on this property, to represent our interests in the transaction.

[***provider and settlement service***]	[***charge or range of charges***]
_____	_____
_____	_____
_____	_____

ACKNOWLEDGMENT

I/we have read this disclosure form, and understand that referring party is referring me/us to purchase the above-described settlement service(s) and may receive a financial or other benefit as the result of this referral.

_____

Signature

[**INSTRUCTIONS TO PREPARER**:] [Use paragraph A for referrals other than those by a lender to an attorney, a credit reporting agency, or a real estate appraiser that a lender is requiring a borrower to use to represent the lender's interests in the transaction. Use paragraph B for those referrals to an attorney, credit reporting agency, or real estate appraiser that a lender is requiring a borrower to use to represent the lender's interests in the transaction. When applicable, use both paragraphs. Specific timing rules for delivery of the affiliated business disclosure statement are set forth in 12 CFR 1024.15(b)(1) of Regulation X). These **INSTRUCTIONS TO PREPARER** should not appear on the statement.]

Section 15: Good Faith Estimate [12 C.F.R § 1024.7]

Synopsis

While this is the part of the regulation, it has no practical purpose for us today, and we have chosen to omit any further comment about this form.

Section 16: List of Homeownership Counseling Organizations [12 C.F.R. § 1024.20]

Synopsis

This rule related to the requirements under the High-Cost Mortgage and Homeownership Counseling Amendments to the Truth in Lending Act (Regulation Z) and Homeownership Counseling Amendments to the Real Estate Settlement Procedures Act (RESPA Homeownership Counseling Amendments) Final Rule to provide a homeownership counseling list using data made available by the CFPB or Department of Housing and Urban Development (HUD).

The CFPB specified two compliance methods for obtaining this list: (1) using a tool developed and maintained by the CFPB on its Web site, and (2) using data made available by the CFPB or HUD, provided that the data is used in accordance with instructions provided with the data. .

List and Data Instructions

Number of Homeownership Counselors To Appear on List

Section 1024.20(a)(1) requires lenders to provide a written list of homeownership counseling organizations not later than three business days after receipt of an application. Consistent with § 1024.20(a)(1), lenders comply with this requirement when they provide a list of ten HUD-approved housing counseling agencies. The tool maintained by the CFPB will generate the required number of HUD-approved housing counseling agencies. Listing ten housing counseling agencies ensures fairness and equity among housing counseling agencies, by offering borrowers a thorough and diverse list of counseling options.

Location by Zip Code

Section 1024.20(a)(1) requires lenders to provide a written list of homeownership counseling organizations in the loan applicant's location. As the CFPB discussed in the RESPA Homeownership Counseling Amendments, lenders comply with § 1024.20(a)(1), when they use the borrower's five-digit zip code to generate a list of the ten closest HUD-approved housing counseling agencies to the centroid of the zip code of the borrower's current address, in descending order of proximity to the centroid. The borrower's current zip code satisfies the requirement that the homeownership counseling organizations be in the loan applicant's location.

The zip code of the borrower's current address is the default to be entered for list generation. Lenders, should they choose, may offer borrowers the option of generating the list from a zip code different than their home address, but lenders are not required to offer such an option. Lenders generating a list pursuant to § 1024.20(a)(1)(ii) through zip code will ensure that lists generated under this provision are obtained through similar means as those generated through the CFPB's tool, thus ensuring consistency.

Homeownership Counselor Contact Information

Section 1024.20(a)(1) requires lenders to provide a written list of homeownership counseling organizations that provide relevant services in the loan applicant's location. Consistent with § 1024.20(a)(1), lenders comply when they provide the following data fields for each housing counseling agency on the list to the extent that they are available through the HUD API: Agency name, phone number, street address, street address continued, city, state, zip code, Web site URL, email address, counseling services provided, and languages spoken. Providing a street address is preferable to providing a mailing address, as available.

Accompanying Information

Lenders comply with § 1024.20(a)(1) when the following language is included: "The counseling agencies on this list are approved by the U.S. Department of Housing and Urban Development (HUD), and they can offer independent advice about whether a particular set of mortgage loan terms is a good fit based on your objectives and circumstances, often at little or no cost to you. This list shows you several approved agencies in your area. You can find other approved counseling agencies at the Consumer Financial Protection Bureau's (CFPB) Web site: *consumerfinance.gov/mortgagehelp* or by calling 1-855-411-CFPB (2372). You can also access a list of nationwide HUD-approved counseling intermediaries at ***http://portal.hud.gov/hudportal/HUD?src=/ohc_nint***."

Including information about where borrowers can gain additional information is consistent with the CFPB's preamble discussion of how it envisioned implementing the § 1024.20(a)(1) list requirement in the RESPA Homeownership Counseling Amendments. Giving borrowers the link to HUD-approved national counseling intermediaries offers borrowers additional housing counseling options, as national intermediaries offer phone counseling and online counseling services, which are particularly useful to borrowers in remote areas or areas less-dense with counseling agencies.

The CFPB's tool will generate lists under § 1024.20(a)(1)(i) that include this text above. By including this information, lenders generating lists under § 1024.20(a)(1)(ii) will comply with § 1024.20(a)(1). This will ensure that information provided under this provision is consistent with information accompanying lists generated by the CFPB's Web site.

Regulatory Text - List of homeownership counseling organizations. [12 C.F.R § 1024.20]

(a) ***Provision of list****.*

(1) Except as otherwise provided in this section, not later than three business days after a lender, mortgage broker, or dealer receives an application, or information sufficient to complete an application, the lender must provide the loan applicant with a clear and conspicuous written list of homeownership counseling organizations that provide relevant counseling services in the loan applicant's location. The list of homeownership counseling organizations distributed to each loan applicant under this section shall be obtained no earlier than 30 days prior to the time when the list is provided to the loan applicant from either:

(i) The website maintained by the Bureau for lenders to use in complying with the requirements of this section; or

(ii) Data made available by the Bureau or HUD for lenders to use in complying with the requirements of this section, provided that the data is used in accordance with instructions provided with the data.

(2) The list of homeownership counseling organizations provided under this section may be combined and provided with other mortgage loan disclosures required pursuant to Regulation Z, 12 CFR part 1026, or this part unless prohibited by Regulation Z or this part.

(3) A mortgage broker or dealer may provide the list of homeownership counseling organizations required under this section to any loan applicant from whom it receives or for whom it prepares an application. If the mortgage broker or dealer has provided the required list of homeownership counseling organizations, the lender is not required to provide an additional list. The lender is responsible for ensuring that the list of homeownership counseling organizations is provided to a loan applicant in accordance with this section.

(4) If the lender, mortgage broker, or dealer does not provide the list of homeownership counseling organizations required under this section to the loan applicant in person, the lender must mail or deliver the list to the loan applicant by other means. The list may be provided in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act), 15 U.S.C. 7001 et seq.

(5) The lender is not required to provide the list of homeownership counseling organizations required under this section if, before the end of the three-business-day period provided in paragraph (a)(1) of this section, the lender denies the application or the loan applicant withdraws the application.

(6) If a mortgage loan transaction involves more than one lender, only one list of homeownership counseling organizations required under this section shall be given to the loan applicant and the lenders shall agree among themselves which lender will comply with the requirements that this section imposes on any or all of them. If there is more than one loan applicant, the required list of homeownership counseling organizations may be provided to any loan applicant with primary liability on the mortgage loan obligation.

(b) ***Open-end lines of credit (home-equity plans) under Regulation Z****. For a federally related mortgage loan that is a home-equity line of credit subject to Regulation Z, 12 CFR 1026.40, a lender or mortgage broker that provides the loan applicant with the list of homeownership organizations required under this section may comply with the timing and delivery requirements set out in either paragraph (a) of this section or 12 CFR 1026.40(b).*

(c) ***Exemptions****.*

(1) ***Reverse mortgage transactions****. A lender is not required to provide an applicant for a reverse mortgage transaction subject to 12 CFR 1026.33(a) the list of homeownership counseling organizations required under this section.*

*(2) **Timeshare plans**. A lender is not required to provide an applicant for a mortgage loan secured by a timeshare, as described under 11 U.S.C. 101(53D), the list of homeownership counseling organizations required under this section.*

Regulatory Commentary [12 C.F.R § 1024.20]

The regulation does not offer any commentary on this section.

Disclosures at Closing

Section 17: Completion of HUD-1 or HUD-1A Settlement Statements [12 C.F.R. § 1024.8]

Synopsis

The HUD-1 and HUD-1A forms are intended to be a companion document to the Good Faith Estimate. Like the GOP, this form has no practical purpose for us today and we will ignore it for purposes of this training session.

Subpart C: RESPA

Mortgage Servicing Rules

Section 18: Regulation X: Mortgage Servicing Rules - Overview

Introduction

Most of the servicing rules are the result of amendments to the Real Estate Settlement Procedures Act of 1974 (RESPA). They implement provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act or Act) regarding mortgage loan servicing.

Throughout this manual, the term "creditor" also means assignees and servicers. This is to simplify the continual repeating of these terms. The language was not altered in the actual regulatory text and commentary.

Scope of the Final Servicing Rules

The rules have different scopes with respect to the types of mortgage loan transactions covered and the loans that are exempted. Some requirements apply to federally related mortgage loans that are closed-end, with certain exemptions for loans on property of 25 acres or more, business-purpose loans, temporary financing, loans secured by vacant land, and certain loan assumptions or conversions. HELOCs are generally exempt from the RESPA servicing regulations.

Small Servicers

In this rule, the CFPB exercised its authority to provide an exemption for small servicers, which are servicers that service 5,000 mortgage loans or less and only service mortgage loans that the servicer or an affiliate owns or originated ("small servicers").

Other Exemptions

The regulation does not apply to reverse mortgage transactions. Also, "qualified lenders" subject to Farm Credit Administration regulation of their loss mitigation practices should be exempt from compliance from the same exemption requirements as small servicers.

The regulation limits the scope of the new rules to mortgage loans that are secured by a borrower's principal residence.

Section 19: Regulation X - Subparts A and B Servicing Definitions

Subpart A - General

There are definitions in 12 CFR § 1024.2, which are specifically for servicing issues, and are included immediately below. The CFPB also has E-Sign rule issues that are specific for servicing. This information also appears below.

Servicing Definitions [12 C.F.R § 1024.2(b)]

Synopsis

There are definitions that are specific to the discussion of servicing. Other general definitions under RESPA are listed earlier in this manual. The following definitions are specific to Subpart C.

Regulatory Text – Servicing Definitions [12 C.F.R § 1024.2(b)]

(b) * * *

Federally related mortgage loan means:

(1) Any loan (other than temporary financing, such as a construction loan):

*(i) That is secured by a **first or subordinate lien** on residential real property, including a refinancing of any secured loan on residential real property, upon which there is either:*

(A) Located or, following settlement, will be constructed using proceeds of the loan, a structure or structures designed principally for occupancy of from one to four families (including individual units of condominiums and cooperatives and including any related interests, such as a share in the cooperative or right to occupancy of the unit); or

(B) Located or, following settlement, will be placed using proceeds of the loan, a manufactured home; and

(ii) For which one of the following paragraphs applies. The loan:

(A) Is made in whole or in part by any lender that is either regulated by or whose deposits or accounts are insured by any agency of the Federal Government;

(B) Is made in whole or in part, or is insured, guaranteed, supplemented, or assisted in any way:

(1) By the Secretary of the Department of Housing and Urban Development (HUD) or any other officer or agency of the Federal Government; or

(2) Under or in connection with a housing or urban development program administered by the Secretary of HUD or a housing or related program administered by any other officer or agency of the Federal Government;

(C) Is intended to be sold by the originating lender to the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation (or its successors), or a financial institution from which the loan is to be purchased by the Federal Home Loan Mortgage Corporation (or its successors);

(D) Is made in whole or in part by a "creditor," as defined in section 103(g) of the Consumer Credit Protection Act (15 U.S.C. 1602(g)), that makes or invests in residential real estate loans aggregating more than $1,000,000 per year. For purposes of this definition, the term "creditor" does not include any agency or instrumentality of any State, and the term "residential real estate loan" means any loan secured by residential real property, including single-family and multifamily residential property;

(E) Is originated either by a dealer or, if the obligation is to be assigned to any maker of mortgage loans specified in paragraphs (1)(ii)(A) through (D) of this definition, by a mortgage broker; or

(F) Is the subject of a home equity conversion mortgage, also frequently called a "reverse mortgage," issued by any maker of mortgage loans specified in paragraphs (1)(ii)(A) through (D) of this definition.

(2) Any installment sales contract, land contract, or contract for deed on otherwise qualifying residential property is a federally related mortgage loan if the contract is funded in whole or in part by proceeds of a loan made by any maker of mortgage loans specified in paragraphs (1)(ii)(A) through (D) of this definition.

(3) If the residential real property securing a mortgage loan is not located in a State, the loan is not a federally related mortgage loan.

* * * * *

***Mortgage broker** means a person (other than an employee of a lender) that renders origination services and serves as an intermediary between a borrower and a lender in a transaction involving a federally related mortgage loan, including such a person that closes the loan in its own name in a table-funded transaction.*

* * * * *

***Origination service** means any service involved in the creation of a federally related mortgage loan, including but not limited to the taking of the loan application, loan processing, the underwriting and funding of the loan, and the processing and administrative services required to perform these functions.*

* * * * *

Public Guidance Documents *means Federal Register documents adopted or published, that the Bureau may amend from time-to-time by publication in the Federal Register. These documents are also available from the Bureau. Requests for copies of Public Guidance Documents should be directed to the Associate Director, Research, Markets, and Regulations, Bureau of Consumer Financial Protection, 1700 G Street, NW, Washington, DC 20552.*

* * * * *

Servicer *means a person responsible for the servicing of a federally related mortgage loan (including the person who makes or holds such loan if such person also services the loan). The term does not include:*

(1) The Federal Deposit Insurance Corporation (FDIC), in connection with assets acquired, assigned, sold, or transferred pursuant to section 13(c) of the Federal Deposit Insurance Act or as receiver or conservator of an insured depository institution;

(2) The National Credit Union Administration (NCUA), in connection with assets acquired, assigned, sold, or transferred pursuant to section 208 of the Federal Credit Union Act or as conservator or liquidating agent of an insured credit union; and

(3) The Federal National Mortgage Corporation (FNMA); the Federal Home Loan Mortgage Corporation (Freddie Mac); the FDIC; HUD, including the Government National Mortgage Association (GNMA) and the Federal Housing Administration (FHA) (including cases in which a mortgage insured under the National Housing Act (12 U.S.C. 1701 et seq.) is assigned to HUD); the NCUA; the Farm Service Agency; and the Department of Veterans Affairs (VA), in any case in which the assignment, sale, or transfer of the servicing of the federally related mortgage loan is preceded by termination of the contract for servicing the loan for cause, commencement of proceedings for bankruptcy of the servicer, commencement of proceedings by the FDIC for conservatorship or receivership of the servicer (or an entity by which the servicer is owned or controlled), or commencement of proceedings by the NCUA for appointment of a conservator or liquidating agent of the servicer (or an entity by which the servicer is owned or controlled).

Servicing *means receiving any scheduled periodic payments from a borrower pursuant to the terms of any federally related mortgage loan, including amounts for escrow accounts under section 10 of RESPA (12 U.S.C. 2609), and making the payments to the owner of the loan or other third parties of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the mortgage servicing loan documents or servicing contract. In the case of a home equity conversion mortgage or reverse mortgage as referenced in this section, servicing includes making payments to the borrower.*

* * * * *

Regulatory Commentary – Servicing Definitions [12 C.F.R § 1024.2]

The CFPB offers no additional commentary regarding this topic.

E-Sign Applicability and Servicing [12 C.F.R § 1024.3]

Synopsis

This is simply a reminder that E-Sign applies in RESPA Subpart C – Servicing.

Regulatory Text – E-Sign Applicability and Servicing [12 C.F.R § 1024.3]

The disclosures required by this part may be provided in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 et seq.).

Regulatory Commentary – E-Sign Applicability and Servicing [12 C.F.R § 1024.3]

The CFPB offers no additional commentary regarding this topic.

Coverage of RESPA and Servicing - [12 C.F.R § 1024.5]

Synopsis

This section adds language discussing the coverage regarding a bona fide transfer of a mortgage loan. Some portions of a bona fide transfer are covered. Other portions of the transfer are not. This is discussed in detail throughout the rest of the manual (as applicable).

Regulatory Text – Coverage of RESPA and Servicing [12 C.F.R § 1024.5]

(b) * * *

(7) ***Secondary market transactions****. A bona fide transfer of a loan obligation in the secondary market is not covered by RESPA and this part, except with respect to RESPA (12 U.S.C. 2605) and subpart C of this part (§§ 1024.30-1024.41). In determining what constitutes a bona fide transfer, the Bureau will consider the real source of funding and the real interest of the funding lender. Mortgage broker transactions that are table-funded are not secondary market transactions. Neither the creation of a dealer loan or dealer consumer credit contract, nor the first assignment of such loan or contract to a lender, is a secondary market transaction (see § 1024.2).*

Regulatory Commentary – Coverage of RESPA and Servicing - [12 C.F.R § 1024.5]

The CFPB offers no additional commentary regarding this topic.

Section 20: Subpart C - 12 CFR §§ 1024.30 – 1024.32 Servicing Regulation Scope, Exemptions, and Definitions

Scope, Exemptions, and Definitions [12 C.F.R § 1024.30 – 1024.32]

Synopsis

The servicing rules have a definite scope, and depend in part on whether the servicer involved is a small servicer under the regulation (servicing 5,000 or fewer loans that they originated or bought), or a large servicer. Additionally, there are definitions specific to Subpart C: Servicing.

While somewhat repetitious, Subpart C also offers its own requirements for general disclosure requirements. These requirements are not significantly different than other portions of the regulation.

The regulatory text and commentaries offer the specifics for each of these issues.

Regulatory Text – Scope [12 C.F.R § 1024.30]

*(a) **In general.** Except as provided in paragraph (b) and (c) of this section, this subpart applies to any mortgage loan, as that term is defined in § 1024.31.*

*(b) **Exemptions.** Except as otherwise provided in § 1024.41(j), §§ 1024.38 through 41 of this subpart shall not apply to the following:*

(1) A servicer that qualifies as a small servicer pursuant to 12 CFR 1026.41(e)(4);

(2) A servicer with respect to any reverse mortgage transaction as that term is defined in § 1024.31; and

(3) A servicer with respect to any mortgage loan for which the servicer is a qualified lender as that term is defined in 12 CFR 617.7000.

*(c) **Scope of certain sections.***

(1) § 1024.33(a) only applies to mortgage loans that are secured by a first lien.

(2) The procedures set forth in §§ 1024.39 through 41 of this subpart only apply to a mortgage loan that is secured by a property that is a borrower's principal residence.

Regulatory Commentary – Scope [12 C.F.R § 1024.30]

§ 1024.30 (b) Exemptions

*1. **Exemption for Farm Credit System institutions**. Pursuant to 12 CFR 617.7000, certain*

servicers may be considered "qualified lenders" only with respect to loans discounted or pledged pursuant to 12 U.S.C. § 2015(b)(1). To the extent a servicer, as defined in RESPA, services a mortgage loan that has not been discounted or pledged pursuant to 12 U.S.C. § 2015(b)(1), and is not subject to the requirements set forth in 12 CFR 617, the servicer may be required to comply with the requirements of §§ 1024.38 through 41 with respect to that mortgage loan.

Regulatory Text – Additional Servicing Definitions [12 CFR § 1024.31]

For purposes of this subpart:

***Consumer reporting agency** has the meaning set forth in section 603 of the Fair Credit Reporting Act, 15 U.S.C. 1681a.*

***Day** means calendar day.*

***Hazard insurance** means insurance on the property securing a mortgage loan that protects the property against loss caused by fire, wind, flood, earthquake, theft, falling objects, freezing, and other similar hazards for which the owner or assignee of such loan requires insurance.*

***Loss mitigation application** means an oral or written request for a loss mitigation option that is accompanied by any information required by a servicer for evaluation for a loss mitigation option.*

***Loss mitigation option** means an alternative to foreclosure offered by the owner or assignee of a mortgage loan that is made available through the servicer to the borrower.*

***Master servicer** means the owner of the right to perform servicing. A master servicer may perform the servicing itself or do so through a subservicer.*

***Mortgage loan** means any federally related mortgage loan, as that term is defined in § 1024.2 subject to the exemptions in § 1024.5(b), but does not include open-end lines of credit (home equity plans).*

***Qualified written request** means a written correspondence from the borrower to the servicer that includes, or otherwise enables the servicer to identify, the name and account of the borrower, and either:*

(1) States the reasons the borrower believes the account is in error; or

(2) Provides sufficient detail to the servicer regarding information relating to the servicing of the mortgage loan sought by the borrower.

***Reverse mortgage transaction** has the meaning set forth in 12 CFR 1026.33(a).*

***Service provider** means any party retained by a servicer that interacts with a borrower or provides a service to the servicer for which a borrower may incur a fee.*

***Subservicer** means a servicer that does not own the right to perform servicing, but that performs servicing on behalf of the master servicer.*

Transferee servicer *means a servicer that obtains or will obtain the right to perform servicing pursuant to an agreement or understanding.*

Transferor servicer *means a servicer, including a table-funding mortgage broker or dealer on a first- lien dealer loan, that transfers or will transfer the right to perform servicing pursuant to an agreement or understanding.*

Regulatory Commentary – Additional Servicing Definitions [12 CFR § 1024.31]

Loss mitigation application.

1. ***Borrower's representative.*** *A loss mitigation application is deemed to be submitted by a borrower if the loss mitigation application is submitted by an agent of the borrower. Servicers may undertake reasonable procedures to determine if a person that claims to be an agent of a borrower has authority from the borrower to act on the borrower's behalf.*

Loss mitigation option.

1. ***Types of loss mitigation options.*** *Loss mitigation options include temporary and long-term relief, including options that allow borrowers who are behind on their mortgage payments to remain in their homes or to leave their homes without a foreclosure, such as, without limitation, refinancing, trial or permanent modification, repayment of the amount owed over an extended period of time, forbearance of future payments, short-sale, deed-in-lieu of foreclosure, and loss mitigation programs sponsored by a locality, a State, or the Federal government.*

2. ***Available through the servicer.*** *A loss mitigation option available through the servicer refers to an option for which a borrower may apply, even if the borrower ultimately does not qualify for such option.*

Qualified written request.

1. A ***qualified written request*** *is a written notice a borrower provides to request a servicer either correct an error relating to the servicing of a mortgage loan or to request information relating to the servicing of the mortgage loan. A qualified written request is not required to include both types of requests. For example, a qualified written request may request information relating to the servicing of a mortgage loan but not assert that an error relating to the servicing of a loan has occurred.*

2. A qualified written request is just one form that a written notice of error or information request may take. Thus, the error resolution and information request requirements in §§ 1024.35 and 1024.36 apply as set forth in those sections irrespective of whether the servicer receives a qualified written request.

Service provider.

1. Service providers may include attorneys retained to represent a servicer or an owner or assignee of a mortgage loan in a foreclosure proceeding, as well as other professionals retained to provide appraisals or inspections of properties.

Regulatory Text – Servicing and General Disclosure Requirements [12 CFR § 1024.32]

(a) ***Disclosure requirements.***

(1) ***Form of disclosures.*** *Except as otherwise provided in this subpart, disclosures required under this subpart must be clear and conspicuous, in writing, and in a form that a recipient may keep. The disclosures required by this subpart may be provided in electronic form, subject to compliance with the consumer consent and other applicable provisions of the E-Sign Act, as set forth in §1024.3. A servicer may use commonly accepted or readily understandable abbreviations in complying with the disclosure requirements of this subpart.*

(2) ***Foreign language disclosures.*** *Disclosures required under this subpart may be made in a language other than English, provided that the disclosures are made available in English upon a recipient's request.*

(b) ***Additional information; disclosures required by other laws.*** *Unless expressly prohibited in this subpart, by other applicable law, such as the Truth in Lending Act (15 U.S.C. 1601 et seq.) or the Truth in Savings Act (12 U.S.C. 4301 et seq.), or by the terms of an agreement with a Federal or State regulatory agency, a servicer may include additional information in a disclosure required under this subpart or combine any disclosure required under this subpart with any disclosure required by such other law.*

Regulatory Commentary – Servicing and General Disclosure Requirements [12 CFR § 1024.32]

The CFPB offers no additional commentary regarding this topic.

Section 21: 12 CFR § 1024.33
Mortgage Servicing Transfers

Servicing Disclosure Statement [12 CFR § 1024.33(a)]

Synopsis

This is just a reminder of the rule that a servicing disclosure statement is due within three days of application. This was discussed earlier in the manual, and the disclosure is now part of the Loan Estimate. We are including the regulatory text here as well, as this disclosure is part of the entire mortgage servicing process.

Regulatory Text – Servicing Disclosure Statement - 12 CFR § 1024.33(a)

*(a) **Servicing disclosure statement.** Within three days (excluding legal public holidays, Saturdays, and Sundays) after a person applies for a reverse mortgage transaction, the lender, mortgage broker who anticipates using table funding, or dealer in a first-lien dealer loan shall provide to the person a servicing disclosure statement that states whether the servicing of the mortgage loan may be assigned, sold, or transferred to any other person at any time. Appendix MS-1 of this part contains a model form for the disclosures required under this paragraph (a). If a person who applies for a reverse mortgage transaction is denied credit within the three-day period, a servicing disclosure statement is not required to be delivered.*

Regulatory Commentary – Servicing Disclosure Statement - 12 CFR § 1024.33(a)

3(a) Servicing disclosure statement.

*1. **Terminology.** Although the servicing disclosure statement must be clear and conspicuous pursuant to §1024.32(a), §1024.33(a) does not set forth any specific rules for the format of the statement, and the specific language of the servicing disclosure statement in appendix MS-1 is not required to be used. The model format may be supplemented with additional information that clarifies or enhances the model language.*

*2. **Delivery to co-applicants.** If co-applicants indicate the same address on their application, one copy delivered to that address is sufficient. If different addresses are shown by co-applicants on the application, a copy must be delivered to each of the co-applicants.*

*3. **Lender servicing.** If the lender, mortgage broker who anticipates using table funding, or dealer in a first lien dealer loan knows at the time of making the disclosure whether it will service the mortgage loan for which the applicant has applied, the disclosure must, as applicable, state that such entity will service such loan and does not intend to sell, transfer, or assign the servicing of the loan, or that such entity intends to assign, sell, or transfer servicing of such mortgage loan before the first payment is due. In all other instances, a disclosure that states that the servicing of the loan may be assigned, sold, or transferred while the loan is outstanding complies with §1024.33(a).*

Notice of Transfer of Loan Servicing [12 CFR § 1024.33(b)]

Synopsis

This section sets forth the general requirement to provide the servicing transfer notice.

Requirement for Notice

Each transferor servicer and transferee servicer of any mortgage servicing loan shall deliver to the borrower a written Notice of Transfer, containing the information described in this section, of any assignment, sale, or transfer of the servicing of the loan. The following transfers are not considered an assignment, sale, or transfer of mortgage loan servicing for purposes of this requirement if there is no change in the payee, address to which payment must be delivered, account number, or amount of payment due:

- Transfers between affiliates
- Transfers resulting from mergers or acquisitions of servicers or subservicers
- Transfers between master servicers, where the subservicer remains the same

The Federal Housing Administration (FHA) is not required to submit to the borrower a Notice of Transfer in cases where a mortgage insured under the National Housing Act is assigned to FHA.

Timing of Notice

- The transferor servicer shall deliver the Notice of Transfer to the borrower not less than 15 days before the effective date of the transfer of the servicing of the mortgage servicing loan;
- The transferee servicer shall deliver the Notice of Transfer to the borrower not more than 15 days after the effective date of the transfer; and
- The transferor and transferee servicers may combine their notices into one notice, which shall be delivered to the borrower not less than 15 days before the effective date of the transfer of the servicing of the mortgage servicing loan.
- The Notice of Transfer shall be delivered to the borrower by the transferor servicer or the transferee servicer not more than 30 days after the effective date of the transfer of the servicing of the mortgage servicing loan in any case in which the transfer of servicing is preceded by:
    - Termination of the contract for servicing the loan for cause;
    - Commencement of proceedings for bankruptcy of the servicer; or

- Commencement of proceedings by the Federal Deposit Insurance Corporation (FDIC) or the Resolution Trust Corporation (RTC) for conservatorship or receivership of the servicer or an entity that owns or controls the servicer.

Notices of Transfer delivered at settlement by the transferor servicer and transferee servicer, whether as separate notices or as a combined notice, will satisfy the timing requirements of this section.

Content of Notice of Transfer

The Notice of Transfer must include the following information:

- The effective date of the transfer of servicing;
- The name, consumer inquiry addresses (including, at the option of the servicer, a separate address where qualified written requests must be sent), and a toll-free or collect-call telephone number for an employee or department of the transferee servicer;
- A toll-free or collect-call telephone number for an employee or department of the transferor servicer that can be contacted by the borrower for answers to servicing transfer inquiries;
- The date on which the transferor servicer will cease to accept payments relating to the loan and the date on which the transferee servicer will begin to accept such payments. These dates shall either be the same or consecutive days;
- Information concerning any effect the transfer may have on the terms or the continued availability of mortgage life or disability insurance, or any other type of optional insurance, and any action the borrower must take to maintain coverage;
- A statement that the transfer of servicing does not affect any other term or condition of the mortgage documents, other than terms directly related to the servicing of the loan; and
- A statement of the borrower's rights in connection with complaint resolution. Appendix MS-2 of this part illustrates a statement satisfactory to the Bureau.

Sample Notices of Transfer

Sample language that may be used to comply with the requirements of this section is set out in Appendix MS-2. Minor modifications to the sample language may be made to meet the particular circumstances of the servicer, but the substance of the sample language must not be omitted or substantially altered. The sample notice is included at the end of this section.

Regulatory Text – Notices of Transfer of Loan Servicing - 12 CFR § 1024.33(b)

(b) ***Notices of transfer of loan servicing***

(1) ***Requirement for notice.*** *Except as provided in paragraph (b)(2) of this section, each transferor servicer and transferee servicer of any mortgage loan shall provide to the borrower a notice of transfer for any assignment, sale, or transfer of the servicing of the mortgage loan. The notice must contain the information described in paragraph (b)(4) of this section. Appendix MS-2 of this part contains a model form for the disclosures required under this paragraph (b).*

(2) ***Certain transfers excluded.***

(i) The following transfers are not assignments, sales, or transfers of mortgage loan servicing for purposes of this section if there is no change in the payee, address to which payment must be delivered, account number, or amount of payment due:

(A) A transfer between affiliates;

(B) A transfer that results from mergers or acquisitions of servicers or subservicers;

(C) A transfer that occurs between master servicers without changing the subservicer;

(ii) The Federal Housing Administration (FHA) is not required to provide to the borrower a notice of transfer where a mortgage insured under the National Housing Act is assigned to the FHA.

(3) ***Time of notice***

(i) ***In general.*** *Except as provided in paragraphs (b)(3)(ii) and (iii) of this section, the transferor servicer shall provide the notice of transfer to the borrower not less than 15 days before the effective date of the transfer of the servicing of the mortgage loan. The transferee servicer shall provide the notice of transfer to the borrower not more than 15 days after the effective date of the transfer. The transferor and transferee servicers may provide a single notice, in which case the notice shall be provided not less than 15 days before the effective date of the transfer of the servicing of the mortgage loan.*

(ii) ***Extended time.*** *The notice of transfer shall be provided to the borrower by the transferor servicer or the transferee servicer not more than 30 days after the effective date of the transfer of the servicing of the mortgage loan in any case in which the transfer of servicing is preceded by:*

(A) Termination of the contract for servicing the loan for cause;

(B) Commencement of proceedings for bankruptcy of the servicer;

(C) Commencement of proceedings by the FDIC for conservatorship or receivership of the servicer or an entity that owns or controls the servicer; or

(D) Commencement of proceedings by the NCUA for appointment of a conservator or liquidating agent of the servicer or an entity that owns or controls the servicer.

(iii) ***Notice provided at settlement****. Notices of transfer provided at settlement by the transferor servicer and transferee servicer, whether as separate notices or as a combined notice, satisfy the timing requirements of paragraph (b)(3) of this section.*

(4) ***Contents of notice.*** *The notices of transfer shall include the following information:*

(i) The effective date of the transfer of servicing;

(ii) The name, address, and a collect call or toll-free telephone number for an employee or department of the transferee servicer that can be contacted by the borrower to obtain answers to servicing transfer inquiries;

(iii) The name, address, and a collect call or toll-free telephone number for an employee or department of the transferor servicer that can be contacted by the borrower to obtain answers to servicing transfer inquiries;

(iv) The date on which the transferor servicer will cease to accept payments relating to the loan and the date on which the transferee servicer will begin to accept such payments. These dates shall either be the same or consecutive days;

(v) Whether the transfer will affect the terms or the continued availability of mortgage life or disability insurance, or any other type of optional insurance, and any action the borrower must take to maintain such coverage; and

(vi) A statement that the transfer of servicing does not affect any term or condition of the mortgage loan other than terms directly related to the servicing of the loan.

Regulatory Commentary – Notices of Transfer of Loan Servicing - 12 CFR § 1024.33(b)

Paragraph 33(b)(3).

1. ***Delivery.*** *A servicer mailing the notice of transfer must deliver the notice to the mailing address (or addresses) listed by the borrower in the mortgage loan documents, unless the borrower has notified the servicer of a new address (or addresses) pursuant to the servicer's requirements for receiving a notice of a change of address.*

Borrower Payments During Transfer of Servicing [12 CFR § 1024.33(c)]

Synopsis

There are several requirements for the handling of payments during the transfer process. The institution's responsibilities depend upon their role in the transaction.

Notice of Receipt of Inquiry

Within 20 business days of a servicer of a mortgage servicing loan's receipt of a qualified written request from the borrower for information relating to the servicing of the loan, the servicer shall provide to the borrower a written response acknowledging receipt of the qualified written request. This requirement shall not apply if the action requested by the borrower is taken within that period and the borrower is notified of that action.

By notice either included in the Notice of Transfer or separately delivered by first class mail, postage prepaid, a servicer may establish a separate and exclusive office and address for the receipt and handling of qualified written requests.

Qualified Written Request Defined

A qualified written request means a written correspondence (other than notice on a payment

coupon or other payment medium supplied by the servicer) that includes, or otherwise enables the servicer to identify the name and account of the borrower, and includes a statement of the reasons that the borrower believes the account is in error, if applicable, or that provides sufficient detail to the servicer regarding information relating to the servicing of the loan sought by the borrower.

A written request does not constitute a qualified written request if it is delivered to a servicer more than one year after either the date of transfer of servicing or the date that the mortgage servicing loan amount was paid in full, whichever date is applicable.

Action with Respect to the Inquiry

Not later than 60 business days after receiving a qualified written request from the borrower and, if applicable, before taking any action with respect to the inquiry, the servicer shall:

- Make appropriate corrections in the account of the borrower, including the crediting of any late charges or penalties, and transmit to the borrower a written notification of the correction. This written notification shall include the name and telephone number of a representative of the servicer who can provide assistance to the borrower, or
- After conducting an investigation, provide the borrower with a written explanation or clarification that includes either:
  - To the extent applicable, a statement of the servicer's reasons for concluding that the account is correct and the name and telephone number of an employee, office, or department of the servicer that can provide assistance to the borrower or
  - Information requested by the borrower, or an explanation of why the information requested is unavailable or cannot be obtained by the servicer, and the name and telephone number of an employee, office, or department of the servicer that can provide assistance to the borrower.

Protection of Credit Rating

During the 60 business-day period beginning on the date the servicer receives from a borrower a qualified written request relating to a dispute on the borrower's payments, a servicer may not provide adverse information regarding any payment that is the subject of the qualified written request to any consumer reporting agency.

The protection of the credit rating provisions of this section does not impede a lender or servicer from pursuing any of its remedies, including initiating foreclosure, allowed by the underlying mortgage loan instruments.

Damages and Costs

Whoever fails to comply with any provision of this section shall be liable to the borrower for each failure in the following amounts:

- ***Individuals.*** In the case of any action by an individual, an amount equal to the sum of any actual damages sustained by the individual as the result of the failure and, when there is a pattern or practice of noncompliance with the requirements of this section, any additional damages in an amount not to exceed $1,000.

- ***Class actions***. In the case of a class action, an amount equal to the sum of any actual damages to each borrower in the class that result from the failure and, when there is a pattern or practice of noncompliance with the requirements of this section, any additional damages in an amount not greater than $1,000 for each class member. However, the total amount of any additional damages in a class action may not exceed the lesser of $500,000 or 1.0 percent of the net worth of the servicer.

- ***Costs.*** In addition, in the case of any successful action under this section, the costs of the action and any reasonable attorney fees incurred in connection with the action.

Nonliability

A transferor or transferee servicer shall not be liable for any failure to comply with the requirements of this section if, within 60 days after discovering an error (whether pursuant to a final written examination report or the servicer's own procedures) and before commencement of an action under this section and the receipt of written notice of the error from the borrower, the servicer notifies the person concerned of the error and makes whatever adjustments are necessary in the appropriate account to ensure that the person will not be required to pay an amount in excess of any amount that the person otherwise would have paid.

Timely Payments by Servicer

If the terms of any mortgage servicing loan require the borrower to make payments to the servicer of the loan for deposit into an escrow account for the purpose of assuring payment of taxes, insurance premiums, and other charges with respect to the mortgaged property, the servicer shall make payments from the escrow account in a timely manner for the taxes, insurance premiums, and other charges as the payments become due, as governed by the requirements in section 1024.17(k).

Regulatory Text - Borrower Payments During Transfer of Servicing - 12 CFR § 1024.33(c)

(c) ***Borrower payments during transfer of servicing***

(1) ***Payments not considered late.*** *During the 60-day period beginning on the effective date of transfer of the servicing of any mortgage loan, if the transferor servicer (rather than the transferee servicer that should properly receive payment on the loan) receives payment on or before the applicable due date (including any grace period allowed under the mortgage loan instruments), a payment may not be treated as late for any purpose.*

(2) ***Treatment of payments.*** *Beginning on the effective date of transfer of the servicing of any mortgage loan, with respect to payments received incorrectly by the transferor servicer (rather than the transferee servicer that should properly receive the payment on the loan), the transferor servicer shall promptly either:*

(i) Transfer the payment to the transferee servicer for application to a borrower's mortgage loan account, or

(ii) Return the payment to the person that made the payment and notify such person of the proper recipient of the payment.

Regulatory Commentary - Borrower Payments During Transfer of Servicing - 12 CFR § 1024.33(c)

33(c)(1) Payments not considered late.

1. ***Late fees prohibited.*** *The prohibition in §1024.33(c)(1) on treating a payment as late for any purpose would prohibit a late fee from being imposed on the borrower with respect to any payment on the mortgage loan. See RESPA section 6(d) (12 U.S.C. 2605(d)).*

2. ***Compliance with §1024.39.*** *A transferee servicer's compliance with §1024.39 during the 60-day period beginning on the effective date of a servicing transfer does not constitute treating a payment as late for purposes of §1024.33(c)(1).*

Preemption of State Laws [12 CFR § 1024.33(d)]

Synopsis

A lender who makes a mortgage servicing loan or a servicer complies with the provisions of any state law or regulation requiring notice to a borrower at the time of application for a loan or transfer of servicing of a loan if the lender or servicer complies with the requirements of this section.

Any state law requiring notice to the borrower at the time of application or at the time of transfer of servicing of the loan is preempted, and there shall be no additional borrower disclosure requirements. Provisions of state law, such as those requiring additional notices to insurance companies or taxing authorities, are not preempted by section 6 of RESPA or this section, and this additional information may be added to a notice prepared under this section if the procedure is allowable under state law.

Regulatory Text – Servicing and Preemption of State Law - 12 CFR § 1024.33(d)

(d) ***Preemption of State laws.*** *A lender who makes a mortgage loan or a servicer shall be considered to have complied with the provisions of any State law or regulation requiring notice to a borrower at the time of application for a loan or transfer of servicing of a loan if the lender or servicer complies with the requirements of this section. Any State law requiring notice to the borrower at the time of application or at the time of transfer of servicing of the loan is preempted, and there shall be no additional borrower disclosure requirements. Provisions of State law, such as those requiring additional notices to insurance companies or taxing authorities, are not preempted by section 6 of RESPA or this section, and this additional information may be added to a notice provided under this section, if permitted under State law.*

Regulatory Commentary – Servicing and Preemption of State Law - 12 CFR § 1024.33(d)

The regulation does not offer any commentary for this section.

Appendix MS-2 to Part 1024

NOTICE OF SERVICING TRANSFER

The servicing of your mortgage loan is being transferred, effective [Date]. This means that after this date, a new servicer will be collecting your mortgage loan payments from you. Nothing else about your mortgage loan will change.

[Name of present servicer] is now collecting your payments. [Name of present servicer] will stop accepting payments received from you after [Date].

[Name of new servicer] will collect your payments going forward. Your new servicer will start accepting payments received from you on [Date].

Send all payments due on or after [Date] to [Name of new servicer] at this address: [New servicer address].

If you have any questions for either your present servicer, [Name of present servicer] or your new servicer [Name of new servicer], about your mortgage loan or this transfer, please contact them using the information below:

Current Servicer:	**New Servicer:**
[Name of present servicer]	[Name of new servicer]
[Individual or Department]	[Individual or Department]
[Telephone Number]	[Telephone Number]
[Address]	[Address]

[Use this paragraph if appropriate; otherwise omit.] Important note about insurance: If you have mortgage life or disability insurance or any other type of optional insurance, the transfer of servicing rights may affect your insurance in the following way:

_____

You should do the following to maintain coverage:

_____

Under Federal law, during the 60-day period following the effective date of the transfer of the loan servicing, a loan payment received by your old servicer on or before its due date may not be treated by the new servicer as late, and a late fee may not be imposed on you.

[NAME OF PRESENT SERVICER]

_____

Date
[and] [or]

_____

[NAME OF NEW SERVICER]

_____

Date

Section 22: 12 CFR § 1024.35
Error Resolution Procedures

Error Resolution Procedures [12 CFR § 1024.35]

Synopsis

RESPA requires servicers to respond to borrowers' "qualified written requests" that relate to the servicing of a loan, and the Dodd-Frank Act prohibits servicers from charging fees for responding to valid qualified written requests. The Act language states that a servicer shall not "fail to take timely action to respond to a borrower's requests to correct errors relating to allocation of payments, final balances for purposes of paying off the loan, or avoiding foreclosure, or other standard servicer's duties." The Act required responses within 10 business days of a borrower's request.

The regulation does not require servicers to comply with error resolution procedures for oral notices of error. At the same time, the final rule includes a catch-all provision that defines errors very broadly. The rule provides that a servicer's policies and procedures should be reasonably designed to provide information to borrowers who are not satisfied with the resolution of a complaint.

Small servicers must comply with the error resolution procedures.

Notice of Error [12 CFR § 1024.35(a)]

Synopsis

RESPA prohibits servicers from failing to take timely action to respond to requests of borrowers to correct errors. However, RESPA does not specify that borrowers' requests to correct errors must be submitted in any particular format to trigger the new prohibition.

A servicer must comply with the requirements for a notice of error made in writing and that includes the name of the borrower, information that enables a servicer to identify the borrower's mortgage loan account, and the error the borrower believed had occurred.

Substance over Form

The final rule clarifies that the substance of the notice of error will determine the servicer's obligation to comply with the error resolution requirements. No particular language is necessary to set forth a notice of error.

Qualified Written Requests

The regulation requires a servicer to treat a qualified written request that asserts an error

relating to the servicing of a loan as a notice of error subject to the requirements. The CFPB intended proposed servicer obligations applicable to qualified written requests that were the same as requirements applicable to other notices of error that otherwise met the requirements.

Oral Notices of Error

The error resolution requirements apply solely to notices of error received in writing. As a result, oral notices of error will not be subject to this rule.

Servicers must maintain policies and procedures reasonably designed to ensure that servicers investigate, respond to, and resolve oral complaints on an informal basis, without having to follow the formal error resolution requirements, as long as the servicer has policies and procedures designed to ensure that borrowers are informed of the written error resolution procedures.

Borrower's Representative

RESPA states that a qualified written request may be provided by a "borrower (or an agent of the borrower)."

The final commentary clarifies that servicers may have reasonable procedures to determine if a person that claims to be an agent of a borrower has authority to act on the borrower's behalf. Upon receipt of adequate documentation, the servicer shall treat a notice of error as having been submitted by the borrower.

Regulatory Text – Notice of Error [12 CFR § 1024.35(a)]

*(a) **Notice of error.** A servicer shall comply with the requirements of this section for any written notice from the borrower that asserts an error and that includes the name of the borrower, information that enables the servicer to identify the borrower's mortgage loan account, and the error the borrower believes has occurred. A notice on a payment coupon or other payment form supplied by the servicer need not be treated by the servicer as a notice of error. A qualified written request that asserts an error relating to the servicing of a mortgage loan is a notice of error for purposes of this section, and a servicer must comply with all requirements applicable to a notice of error with respect to such qualified written request.*

Regulatory Commentary – Notice of Error [12 CFR § 1024.35(a)]

1. Borrower's representative. A notice of error is submitted by a borrower if the notice of error is submitted by an agent of the borrower. A servicer may undertake reasonable procedures to determine if a person that claims to be an agent of a borrower has authority from the borrower to act on the borrower's behalf, for example, by requiring that a person that claims to be an agent of the borrower provide documentation from the borrower stating that the purported agent is acting on the borrower's behalf. Upon receipt of such documentation, the servicer shall treat the notice of error as having been submitted by the borrower.

2. Information request. A servicer should not rely solely on the borrower's description of a submission to determine whether the submission constitutes a notice of error under §1024.35(a), an information request under §1024.36(a), or both. For example, a borrower may submit a letter that

claims to be a "Notice of Error" that indicates that the borrower wants to receive the information set forth in an annual escrow account statement and asserts an error for the servicer's failure to provide the borrower an annual escrow statement. Such a letter may constitute an information request under §1024.36(a) that triggers an obligation by the servicer to provide an annual escrow statement. A servicer should not rely on the borrower's characterization of the letter as a "Notice of Error," but must evaluate whether the letter fulfills the substantive requirements of a notice of error, information request, or both.

Scope of Error Resolution [12 CFR § 1024.35(b)]

Synopsis

RESPA requires servicers to respond to "qualified written requests" asserting errors or requesting information relating to the servicing of a federally-related mortgage loan. The language was augmented in the Dodd-Frank Act amendments, and requires action from the servicer in a wide variety of situations.

Limited List. The CFPB proposed a "limited list" of errors to which the error resolution provisions would apply, as they originally included oral notifications. However, the CFPB included a catch-all provision that includes almost anything.

Failure to Accept a Payment [12 CFR § 1024.35(b)(1)]

The regulation includes as a covered error a servicer's failure to accept a payment that conforms to the note. The CFPB implements RESPA with respect to borrower requests to correct errors relating to allocation of payments for a borrower's account and "other standard servicer's duties." The CFPB believes that proper acceptance of payments is a standard servicer duty. Proper acceptance of payments is servicing, and is subject to the qualified written request procedure.

Failure to Properly Apply Payments [12 CFR § 1024.35(b)(2)]

The regulation includes as an error a servicer's failure to apply an accepted payment to the amounts due for principal, interest, escrow, or other items pursuant to the terms of the note and applicable law. Proper allocation of payments is also servicing, and is subject to the qualified written request procedures.

Failure to Credit as of Date of Receipt [12 CFR § 1024.35(b)(3)]

The regulation includes as an error a servicer's failure to credit a payment to a borrower's mortgage loan account as of the date of receipt, when the result is a charge to the consumer or the furnishing of negative information to a consumer reporting agency. Prompt crediting of borrower payments is servicing and is subject to the qualified written request procedure.

A servicer's failure to credit a payment to a borrower's mortgage loan account as of the date of receipt is an error only in those circumstances in which the failure to credit as of the date of receipt would contravene the regulation.

Failure to Make Proper Escrow Disbursements [12 CFR § 1024.35(b)(4)]

The regulation includes as an error a servicer's failure to make disbursements from an escrow account for taxes, insurance premiums, or other charges, including charges that the borrower and servicer have voluntarily agreed that the servicer should collect and pay, as required by current regulatory language, or to refund an escrow account balance in a timely manner.

The proper disbursement of escrow funds is servicing and is subject to the qualified written request procedure.

Imposing Fees in Error [12 CFR § 1024.35(b)(5)]

This section includes as an error a servicer's imposition of a fee or charge that the servicer lacks a reasonable basis to impose upon the borrower. Examples of non-bona fide charges include such common sense errors as late fees for payments that were not late, default property management fees for borrowers that are not in a delinquency status that would justify the charge, charges from service providers for services that were not actually rendered, and charges for force-placed insurance in circumstances not permitted.

Failure to Provide an Accurate Payoff Balance [12 CFR § 1024.35(b)(6)]

This section includes as an error a servicer's failure to provide an accurate payoff balance to a borrower upon request within the appropriate time frames. Any conduct negative to the customer regarding payoff amounts has the effect of impeding a borrower's ability to pay a mortgage loan obligation in full. The final rule defines as an error the failure to provide an accurate payoff balance amount upon a borrower's request in violation of Regulation Z.

Failure to Provide Accurate Loss Mitigation Information [12 CFR § 1024.35(b)(7)]

This section includes as an error a servicer's failure to provide accurate information to a borrower with respect to loss mitigation options available to the borrower and foreclosure timelines that may be applicable to the borrower's mortgage loan account, as required by Regulation Z.

The CFPB believes it is critical for borrowers to have information regarding available loss mitigation options and requiring that a servicer comply with error resolution procedures to a borrower assertion that a servicer failed to provide such information is important to ensure that borrowers receive this information. The failure of a servicer to provide accurate information will create liability under this section only if the servicer fails to correct the error when called to its attention.

Failure to Accurately Transfer Information to the New Servicer [12 CFR § 1024.35(b)(8)]

This section includes as an error a servicer's failure to accurately and timely transfer information relating to a borrower's mortgage loan account to a transferee servicer. Under this section, a servicer's failure to accurately and timely transfer information relating to a borrower's mortgage loan account to a transferee servicer would constitute an error.

Foreclosure Issues [12 CFR §§ 1024.35(b)(9) and 1024.35(b)(10)]

This section includes as an error a servicer's failure to suspend a foreclosure sale in the circumstances described in Regulation Z. The language provides that a servicer that offers loss mitigation options to borrowers in the ordinary course of business would be prohibited from proceeding with a foreclosure sale when a borrower has submitted a complete application for a loss mitigation option by a specified date, unless the servicer denies the borrower's application for a loss mitigation option (including any appeals), the borrower rejects the servicer's offer of a loss mitigation option, or the borrower fails to perform on a loss mitigation agreement.

Final language defines as an error subject to error resolution requirements making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process in violation of Regulation Z. The CFPB also added a section which defines as an error moving for foreclosure judgment or order of sale, or conducting a foreclosure sale in violation of Regulation Z.

Catch All Provision [12 CFR § 1024.35(b)(11)]

This section includes a catch-all that applies error resolution procedures to errors relating to the servicing of a borrower's mortgage loan. This section defines an error subject to the requirements of the error resolution requirements as any error relating to the servicing of a borrower's mortgage loan.

Regulatory Text – Scope of Error Resolution [12 CFR § 1024.35(b)]

(b) ***Scope of error resolution.*** *For purposes of this section, the term "error" refers to the following categories of covered errors:*

(1) Failure to accept a payment that conforms to the servicer's written requirements for the borrower to follow in making payments.

(2) Failure to apply an accepted payment to principal, interest, escrow, or other charges under the terms of the mortgage loan and applicable law.

(3) Failure to credit a payment to a borrower's mortgage loan account as of the date of receipt in violation of 12 CFR 1026.36(c)(1).

(4) Failure to pay taxes, insurance premiums, or other charges, including charges that the borrower and servicer have voluntarily agreed that the servicer should collect and pay, in a timely manner as required by §1024.34(a), or to refund an escrow account balance as required by §1024.34(b).

(5) Imposition of a fee or charge that the servicer lacks a reasonable basis to impose upon the borrower.

(6) Failure to provide an accurate payoff balance amount upon a borrower's request in violation of section 12 CFR 1026.36(c)(3).

(7) Failure to provide accurate information to a borrower regarding loss mitigation options and foreclosure, as required by §1024.39.

(8) Failure to transfer accurately and timely information relating to the servicing of a borrower's mortgage loan account to a transferee servicer.

(9) Making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process in violation of §1024.41(f) or (j).

(10) Moving for foreclosure judgment or order of sale, or conducting a foreclosure sale in violation of §1024.41(g) or (j).

(11) Any other error relating to the servicing of a borrower's mortgage loan.

Regulatory Commentary – Scope of Error Resolution [12 CFR § 1024.35(b)]

*1. **Noncovered errors.** A servicer is not required to comply with §1024.35(d), (e) and (i) with respect to a borrower's assertion of an error that is not defined as an error in §1024.35(b). For example, the following are not errors for purposes of §1024.35:*

i. An error relating to the origination of a mortgage loan;

ii. An error relating to the underwriting of a mortgage loan;

iii. An error relating to a subsequent sale or securitization of a mortgage loan;

iv. An error relating to a determination to sell, assign, or transfer the servicing of a mortgage loan. However, an error relating to the failure to transfer accurately and timely information relating to the servicing of a borrower's mortgage loan account to a transferee servicer is an error for purposes of §1024.35.

*2. **Unreasonable basis.** For purposes of §1024.35(b)(5), a servicer lacks a reasonable basis to impose fees that are not bona fide, such as:*

i. A late fee for a payment that was not late;

ii. A charge imposed by a service provider for a service that was not actually rendered;

iii. A default property management fee for borrowers that are not in a delinquency status that would justify the charge; or

iv. A charge for force-placed insurance in a circumstance not permitted by §1024.37.

Contact information for borrowers to assert errors [12 CFR § 1024.35(c)]

Synopsis

A servicer may establish an exclusive address that a borrower must use to assert an error. If a servicer chooses to do so, the servicer is required to provide the borrower a notice that states that the borrower may assert an error at the address established by the servicer for that purpose. If a servicer does not designate an address that a borrower must use to assert an error, then the servicer will be required to comply with the error resolution requirements for any notice of error received by any office of the servicer.

The written notice to the borrower may be given within another written notice provided to the borrower, such as a notice of transfer, periodic statement, or coupon book. The commentary also stated that if a servicer establishes an address for receipt of notices of error, the servicer must provide the address in any communication in which the servicer provides the borrower with contact information for assistance from the servicer.

Allowing a servicer to designate a specific address is consistent with current requirements of Regulation X with respect to qualified written requests. Identifying a specific address for receiving errors and information requests will benefit consumers. By providing a specific address, servicers will identify to consumers the office capable of addressing errors identified by consumers.

The regulation requires servicers that designate an address for receipt of notices of error to post the designated address on any website maintained by the servicer, if the website lists any contact address for the servicer.

Multiple Offices

This section requires a servicer to use the same address it designates for receiving notices of error for receiving information requests (see next section), and vice versa. Any address designated by a servicer for any borrower may be used by any other borrower to submit a notice of error.

Internet Intake of Notices of Error

A servicer is not be required to establish a process for receiving notices of error through email, website form, or other online methods. However, if a servicer establishes a process for receiving notices of error through online methods, the servicer can designate it as the only online intake process that a borrower can use to assert an error. A servicer would not be required to provide a written notice to a borrower in order to gain the benefit of the online process being considered the exclusive online process for receiving notices of error. A servicer's decision to accept notices of error through an online intake method shall be in addition to, not in place of, any processes for receiving error notices by mail.

Regulatory Text – Contact Information for Borrowers to Assert Errors [12 CFR § 1024.35(c)]

(c) ***Contact information for borrowers to assert errors.*** *A servicer may, by written notice provided to a borrower, establish an address that a borrower must use to submit a notice of error in accordance with the procedures in this section. The notice shall include a statement that the borrower must use the established address to assert an error. If a servicer designates a specific address for receiving notices of error, the servicer shall designate the same address for receiving information requests pursuant to §1024.36(b). A servicer shall provide a written notice to a borrower before any change in the address used for receiving a notice of error. A servicer that designates an address for receipt of notices of error must post the designated address on any Web site maintained by the servicer if the Web site lists any contact address for the servicer.*

Regulatory Commentary – Contact Information for Borrowers to Assert Errors [12 CFR § 1024.35(c)]

*1. **Exclusive address not required.** A servicer is not required to designate a specific address that a borrower must use to assert an error. If a servicer does not designate a specific address that a borrower must use to assert an error, a servicer must respond to a notice of error received by any office of the servicer.*

*2. **Notice of an exclusive address.** A notice establishing an address that a borrower must use to assert an error may be included with a different disclosure, such as a notice of transfer. The notice is subject to the clear and conspicuous requirement in §1024.32(a)(1). If a servicer establishes an address that a borrower must use to assert an error, a servicer must provide that address to the borrower in the following contexts:*

i. The written notice designating the specific address, required pursuant to §1024.35(c) and §1024.36(b).

ii. Any periodic statement or coupon book required pursuant to 12 CFR 1026.41.

iii. Any Web site the servicer maintains in connection with the servicing of the loan.

iv. Any notice required pursuant to §§1024.39 or .41 that includes contact information for assistance.

*3. **Multiple offices.** A servicer may designate multiple office addresses for receiving notices of errors. However, a servicer is required to comply with the requirements of §1024.35 with respect to a notice of error received at any such designated address regardless of whether that specific address was provided to a specific borrower asserting an error. For example, a servicer may designate an address to receive notices of error for borrowers located in California and a separate address to receive notices of errors for borrowers located in Texas. If a borrower located in California asserts an error through the address used by the servicer for borrowers located in Texas, the servicer is still considered to have received a notice of error and must comply with the requirements of §1024.35.*

*4. **Internet intake of notices of error.** A servicer may, but need not, establish a process for receiving notices of error through email, Web site form, or other online intake methods. Any such online intake process shall be in addition to, and not in lieu of, any process for receiving notices of error by mail. The process or processes established by the servicer for receiving notices of error through an online intake method shall be the exclusive online intake process or processes for receiving notices of error. A servicer is not required to provide a separate notice to a borrower to establish a specific online intake process as an exclusive online process for receiving such notices of error.*

Acknowledgment of Receipt [12 CFR § 1024.35(d)]

Synopsis

A servicer must provide a borrower an acknowledgement of a notice of error within five days (excluding legal public holidays, Saturdays, and Sundays) of receiving a notice of error, as required by the Dodd-Frank Act. The regulation implements the language in RESPA prohibiting the failure to take timely action to respond to requests to correct errors by applying the same timeline applicable to a qualified written request to any notice of error.

The acknowledgment within five days is based on the Dodd-Frank Act. The burden on servicers is mitigated by the fact that the error resolution procedures are only applicable to written notices of error. The contents of the acknowledgment are minimal. Servicers need not provide an acknowledgment if the servicer corrects the error identified by the borrower and notifies the borrower of that correction in writing within five days of receiving the error notice.

Regulatory Text – Acknowledgement of Receipt [12 CFR § 1024.35(d)]

*(d) **Acknowledgment of receipt.** Within five days (excluding legal public holidays, Saturdays, and Sundays) of a servicer receiving a notice of error from a borrower, the servicer shall provide to the borrower a written response acknowledging receipt of the notice of error.*

Regulatory Commentary – Acknowledgement of Receipt [12 CFR § 1024.35(d)]
The regulation does not offer any commentary for this section.

Response to Notice of Error [12 CFR § 1024.35(e)]

Synopsis

This section sets forth requirements on servicers for responding to notices of error.

Investigation and Response Requirements [12 CFR § 1024.35(e)(1)]

A servicer must correct an error within 30 days unless the servicer concludes after a reasonable investigation that no error occurred and notifies the borrower of that finding.

Notices to Borrower

This subsection requires a servicer to correct the error identified by the borrower, and provide the borrower with notification that indicates that the error was corrected, the effective date of the correction, and contact information the borrower can use to get further information.

Providing the effective date of the correction is meaningful information for a borrower to assess whether the servicer has satisfactorily corrected the error, particularly in cases involving changes to the balance of the borrower's account. The notification must be provided in writing and the servicer's contact information must include a telephone number.

A servicer that determines after conducting a reasonable investigation that no error occurred must provide the borrower a notice stating that the servicer has determined that no error has occurred, the reason(s) the servicer believes that no error has occurred, and contact information for servicer personnel that can provide further assistance. It also requires the servicer to inform the borrower in the notice that the borrower may request documents relied on by the servicer in reaching its determination and how the borrower can request such documents.

Multiple Responses

If a notice of error asserts multiple errors, a servicer may respond to those errors through a single written response or separate written responses that address the alleged errors. The purpose of the rule, which is to require timely resolution of errors, is facilitated by allowing a servicer to respond to multiple errors in a single notice of error or through separate communications.

Different or Additional Error

If a servicer, during the course of a reasonable investigation, determines that a different or additional error has occurred, the servicer is required to correct that different or additional error and to provide a borrower a written notice about the error, the corrective action taken, the effective date of the corrective action, and contact information for further assistance. Because the servicer would be correcting an error, a servicer would not be required to provide a notice to the borrower about requesting documents that were the basis for the determination for the reasons discussed above. A servicer may provide the response required in the same notice that responds to errors asserted by the borrower, or in a separate response that addresses the different or additional errors identified by the servicer.

A consumer protection purpose of RESPA is to facilitate the timely correction of errors. Where a servicer discovers an actual error, this purpose is best served by requiring the servicer to correct that error subject to the same procedures that would have applied had the borrower asserted the same error through a qualified written request or notice of error.

Requesting Information from Borrower [12 CFR § 1024.35(e)(2)]

This section permits a servicer to request that a borrower provide documentation if needed to investigate an error, but does not permit a servicer to require the borrower to provide the documentation as a condition of investigating the asserted error. The rule prohibits a servicer from determining that no error occurred simply because the borrower failed to provide the requested documentation.

The CFPB believes the rule strikes the right balance by permitting servicers to request documents from borrowers so long as the servicer's investigation and conclusion that no error occurred is not dependent on the receipt of documents. The CFPB believes that the process for servicers to obtain information from borrowers should not prejudice the ability of the borrower to seek the resolution of the error.

Time Limits [12 CFR § 1024.35(e)(3)]

12 CFR § 1024.35(e)(3)(i) 30 Day Limit

This section requires a servicer to respond to a notice of error not later than 30 days after the borrower notifies the servicer of the asserted error. As Saturdays, Sundays, and legal holidays do not count in this calculation, this is approximately six weeks. There are two exceptions: errors relating to accurate payoff balances and errors relating to failure to suspend a foreclosure sale where a borrower has submitted a complete application for a loss mitigation option.

Shortened Time Limit to Correct Errors Relating to Payoff Balances

This section provides that if a borrower submits a notice of error asserting that a servicer has failed to provide an accurate payoff balance, a servicer must respond to the notice of error not later than seven days (excluding legal public holidays, Saturdays, and Sundays) after the borrower notifies the borrower of the alleged error.

Shortened Time Limit to Correct Certain Errors Relating to Foreclosure

If a borrower submits a notice of error asserting that a servicer has failed to suspend a foreclosure sale, a servicer would be required to investigate and respond to the notice of error by the earlier of 30 days (excluding legal public holidays, Saturdays, and Sundays) or the date of a foreclosure sale. The commentary states that a servicer could maintain a 30-day timeframe to respond to the notice of error if it cancels or postpones the foreclosure sale and a subsequent sale is not scheduled before the expiration of the 30-day deadline.

Extensions of Time Limit

This section permits, subject to certain exceptions, a servicer to extend the time period for investigating and responding to a notice of error by 15 days (excluding legal public holidays, Saturdays, and Sundays) if, before the end of the 30-day period, the servicer notifies the borrower of the extension and the reasons for the delay in responding.

The CFPB did not propose to apply the extension allowance to investigate and respond to errors relating to a servicer's failure to provide an accurate payoff statement or to suspend a foreclosure sale. Permitting an extension of those timeframes would negate these shortened response periods and undermine the purposes served by shortening them.

Copies of Documentation [12 CFR § 1024.35(e)(4)]

When a servicer determines that no error occurred and a borrower requests the documents the servicer relied upon, the servicer must provide the documents within 15 days of the servicer's receipt of the borrower's request.

Servicers may provide a printed screen capture in order to comply. Servicers need not produce documents reflecting confidential, proprietary or privileged information. If documents are withheld, the servicer must notify the borrower of its determination in writing.

Regulatory Text – Response to Notice of Error [12 CFR § 1024.35(e)]

(e) Response to notice of error

(1) ***Investigation and response requirements***

(i) ***In general.*** *Except as provided in paragraphs (f) and (g) of this section, a servicer must respond to a notice of error by either:*

(A) Correcting the error or errors identified by the borrower and providing the borrower with a written notification of the correction, the effective date of the correction, and contact information, including a telephone number, for further assistance; or

(B) Conducting a reasonable investigation and providing the borrower with a written notification that includes a statement that the servicer has determined that no error occurred, a statement of the reason or reasons for this determination, a statement of the borrower's right to request documents relied upon by the servicer in reaching its determination, information regarding how the borrower can request such documents, and contact information, including a telephone number, for further assistance.

(ii) ***Different or additional error.*** *If during a reasonable investigation of a notice of error, a servicer concludes that errors occurred other than, or in addition to, the error or errors alleged by the borrower, the servicer shall correct all such additional errors and provide the borrower with a written notification that describes the errors the servicer identified, the action taken to correct the errors, the effective date of the correction, and contact information, including a telephone number, for further assistance.*

(2) ***Requesting information from borrower****. A servicer may request supporting documentation from a borrower in connection with the investigation of an asserted error, but may not:*

(i) Require a borrower to provide such information as a condition of investigating an asserted error; or

(ii) Determine that no error occurred because the borrower failed to provide any requested information without conducting a reasonable investigation pursuant to paragraph (e)(1)(i)(B) of this section.

(3) ***Time limits***

(i) ***In general.*** *A servicer must comply with the requirements of paragraph (e)(1) of this section:*

(A) Not later than seven days (excluding legal public holidays, Saturdays, and Sundays) after the servicer receives the notice of error for errors asserted under paragraph (b)(6) of this section.

(B) Prior to the date of a foreclosure sale or within 30 days (excluding legal public holidays, Saturdays, and Sundays) after the servicer receives the notice of error, whichever is earlier, for errors asserted under paragraphs (b)(9) and (10) of this section.

(C) For all other asserted errors, not later than 30 days (excluding legal public holidays, Saturdays, and Sundays) after the servicer receives the applicable notice of error.

(ii) ***Extension of time limit.*** *For asserted errors governed by the time limit set forth in paragraph (e)(3)(i)(C) of this section, a servicer may extend the time period for responding by an additional 15 days (excluding legal public holidays, Saturdays, and Sundays) if, before the end of the 30-day period, the servicer notifies the borrower of the extension and the reasons for the extension in writing. A servicer may not extend the time period for responding to errors asserted under paragraph (b)(6), (9), or (10) of this section.*

(4) ***Copies of documentation.*** *A servicer shall provide to the borrower, at no charge, copies of documents and information relied upon by the servicer in making its determination that no error occurred within 15 days (excluding legal public holidays, Saturdays, and Sundays) of receiving the borrower's request for such documents. A servicer is not required to provide documents relied upon that constitute confidential, proprietary or privileged information. If a*

servicer withholds documents relied upon because it has determined that such documents constitute confidential, proprietary or privileged information, the servicer must notify the borrower of its determination in writing within 15 days (excluding legal public holidays, Saturdays, and Sundays) of receipt of the borrower's request for such documents.

Regulatory Commentary – Response to Notice of Error [12 CFR § 1024.35(e)]

Paragraph 35(e)(1)(i).

1. Notices alleging multiple errors; separate responses permitted. A servicer may respond to a notice of error that alleges multiple errors through either a single response or separate responses that address each asserted error.

Paragraph 35(e)(1)(ii).

1. Different or additional errors; separate responses permitted. A servicer may provide the response required by §1024.35(e)(1)(ii) for different or additional errors identified by the servicer in the same notice that responds to errors asserted by the borrower pursuant to §1024.35(e)(1)(i) or in a separate response that addresses the different or additional errors identified by the servicer.

Paragraph 35(e)(3)(i)(B).

1. Foreclosure sale timing. If a servicer cannot comply with its obligations pursuant to §1024.35(e) by the earlier of a foreclosure sale or 30 days after receipt of the notice of error, a servicer may cancel or postpone a foreclosure sale, in which case the servicer would meet the time limit in §1024.35(e)(3)(i)(B) by complying with the requirements of §1024.35(e) before the earlier of 30 days after receipt of the notice of error (excluding legal public holidays, Saturdays, and Sundays) or the date of the rescheduled foreclosure sale.

35(e)(3)(ii) Extension of time limit.

1. Notices alleging multiple errors; extension of time. A servicer may treat a notice of error that alleges multiple errors as separate notices of error and may extend the time period for responding to each asserted error for which an extension is permissible under §1024.35(e)(3)(ii).

35(e)(4) Copies of documentation.

1. Types of documents to be provided. A servicer is required to provide only those documents actually relied upon by the servicer to determine that no error occurred. Such documents may include documents reflecting information entered in a servicer's collection system. For example, in response to an asserted error regarding payment allocation, a servicer may provide a printed screen-capture showing amounts credited to principal, interest, escrow, or other charges in the servicer's system for the borrower's mortgage loan account.

Alternative Compliance [12 CFR § 1024.35(f)]

Synopsis

A servicer does not have to comply with the timing and process requirements in two situations.

First, a servicer that corrects the error identified by the borrower within five days of receiving the notice of error, and notifies the borrower of the correction in writing, would not be required to comply with the acknowledgment, notice and inspection requirements.

Second, a servicer that receives a notice of error for failure to suspend a foreclosure sale seven days or less before a scheduled foreclosure, would not be required to comply with the regulation if, within the appropriate time period, the servicer responds to the borrower, orally or in writing, and corrects the error or states the reason the servicer has determined that no error has occurred.

Regulatory Text – Alternative Compliance [12 CFR § 1024.35(f)]

(f) ***Alternative compliance***

(1) ***Early correction.*** *A servicer is not required to comply with paragraphs (d) and (e) of this section if the servicer corrects the error or errors asserted by the borrower and notifies the borrower of that correction in writing within five days (excluding legal public holidays, Saturdays, and Sundays) of receiving the notice of error.*

(2) ***Error asserted before foreclosure sale.*** *A servicer is not required to comply with the requirements of paragraphs (d) and (e) of this section for errors asserted under paragraph (b)(9) or (10) of this section if the servicer receives the applicable notice of an error seven or fewer days before a foreclosure sale. For any such notice of error, a servicer shall make a good faith attempt to respond to the borrower, orally or in writing, and either correct the error or state the reason the servicer has determined that no error has occurred.*

Regulatory Commentary – Alternative Compliance [12 CFR § 1024.35(f)]

The regulation does not offer any commentary for this section.

Requirements Not Applicable [12 CFR § 1024.35(g)]

Synopsis

A servicer is not required to comply with the error resolution requirements if the servicer reasonably makes the determinations specified in the subsections below. For instance, a servicer need not comply with error resolution requirements if the notice of error asserts an error that is substantially the same as an error asserted previously by or on behalf of the borrower, or that is overbroad or untimely.

Substantially the Same Error [12 CFR § 1024.35(g)(1)(i)]

A servicer is not required to comply with the notice of error requirements when the asserted error is substantially the same as an error asserted previously, and has been investigated, unless the borrower provides new and material information - information that was not reviewed by the servicer in connection with investigating the prior notice of error and is reasonably likely to change a servicer's determination of the existence of an error.

The commentary further clarifies that a dispute regarding whether a servicer previously reviewed information or whether a servicer properly determined that information reviewed was not material to its determination of the existence of an error, and will not itself constitute new and material information and, consequently, does not require a servicer to re-open a prior, resolved investigation of a notice of error.

Overbroad Error [12 CFR § 1024.35(g)(1)(ii)]

A servicer is not required to comply with the notice of error requirements for a notice of error that is overbroad. A notice of error is overbroad if a servicer cannot reasonably determine from the notice of error the specific covered error that a borrower asserts has occurred on a borrower's account.

If a servicer can identify a proper assertion of a covered error in the otherwise overbroad notice, a servicer is required to respond to the covered error submissions it can identify.

Untimely Notice [12 CFR § 1024.35(g)(1)(iii)]

A servicer is not required to comply with the notice of error requirements for an untimely notice which is a notice of error received by a servicer more than one year after either servicing for the mortgage loan that is the subject of the notice of error was transferred by that servicer to a transferee servicer or the mortgage loan amount was paid in full, whichever date is applicable.

Notice to Borrower [12 CFR § 1024.35(g)(2)]

This section requires that if a servicer determines that it is not required to comply with the notice of error requirements with respect to a borrower's notice of error, the servicer must provide a notice to the borrower informing the borrower of the servicer's determination. The servicer must send the notice not later than five days (excluding legal public holidays, Saturdays, and Sundays) after its determination and the notice must set forth the basis upon which the servicer has made the determination.

Regulatory Text – Requirements not Applicable [12 CFR § 1024.35(g)]

(g) ***Requirements not applicable***

(1) ***In general.*** *A servicer is not required to comply with the requirements of paragraphs (d), (e), and (i) of this section if the servicer reasonably determines that any of the following apply:*

(i) ***Duplicative notice of error.*** *The asserted error is substantially the same as an error previously asserted by the borrower for which the servicer has previously complied with its obligation to respond pursuant to paragraphs (d) and (e) of this section, unless the borrower provides new and material information to support the asserted error. New and material information means information that was not reviewed by the servicer in connection with investigating a prior notice of the same error and is reasonably likely to change the servicer's prior determination about the error.*

(ii) ***Overbroad notice of error.*** *The notice of error is overbroad. A notice of error is*

overbroad if the servicer cannot reasonably determine from the notice of error the specific error that the borrower asserts has occurred on a borrower's account. To the extent a servicer can reasonably identify a valid assertion of an error in a notice of error that is otherwise overbroad, the servicer shall comply with the requirements of paragraphs (d), (e) and (i) of this section with respect to that asserted error.

(iii) ***Untimely notice of error.*** *A notice of error is delivered to the servicer more than one year after:*

(A) Servicing for the mortgage loan that is the subject of the asserted error was transferred from the servicer receiving the notice of error to a transferee servicer; or

(B) The mortgage loan is discharged.

(2) ***Notice to borrower.*** *If a servicer determines that, pursuant to this paragraph (g), the servicer is not required to comply with the requirements of paragraphs (d), (e), and (i) of this section, the servicer shall notify the borrower of its determination in writing not later than five days (excluding legal public holidays, Saturdays, and Sundays) after making such determination. The notice to the borrower shall set forth the basis under paragraph (g)(1) of this section upon which the servicer has made such determination.*

Regulatory Commentary – Requirements not Applicable [12 CFR § 1024.35(g)]

Paragraph 35(g)(1)(i).

1. ***New and material information.*** *A dispute between a borrower and a servicer with respect to whether information was previously reviewed by a servicer or with respect to whether a servicer properly determined that information reviewed was not material to its determination of the existence of an error, does not itself constitute new and material information.*

Paragraph 35(g)(1)(ii).

1. ***Examples of overbroad notices of error.*** *The following are examples of notices of error that are overbroad:*

i. Assertions of errors regarding substantially all aspects of a mortgage loan, including errors relating to all aspects of mortgage origination, mortgage servicing, and foreclosure, as well as errors relating to the crediting of substantially every borrower payment and escrow account transaction;

ii. Assertions of errors in the form of a judicial action complaint, subpoena, or discovery request that purports to require servicers to respond to each numbered paragraph; and

iii. Assertions of errors in a form that is not reasonably understandable or is included with voluminous tangential discussion or requests for information, such that a servicer cannot reasonably identify from the notice of error any error for which §1024.35 requires a response.

Payment Requirements Prohibited [12 CFR § 1024.35(h)]

Synopsis

This section prohibits a servicer from charging a fee, or requiring a borrower to make any payment that may be owed on a borrower's account, as a condition of investigating and responding to a notice of error. Nothing here affects a borrower's obligation to make payments owed pursuant to the terms of the mortgage loan.

Regulatory Text – Payment Requirements Prohibited - 12 CFR § 1024.35(h)

*(h) **Payment requirements prohibited.** A servicer shall not charge a fee, or require a borrower to make any payment that may be owed on a borrower's account, as a condition of responding to a notice of error.*

Regulatory Commentary – Payment Requirements Prohibited - 12 CFR § 1024.35(h)

*1. **Borrower obligation to make payments.** Section 1024.35(h) prohibits a servicer from requiring a borrower to make a payment that may be owed on a borrower's account as a prerequisite to investigating or responding to a notice of error submitted by a borrower, but does not alter or otherwise affect a borrower's obligation to make payments owed pursuant to the terms of a mortgage loan. For example, if a borrower makes a monthly payment in February for a mortgage loan, but asserts an error relating to the servicer's acceptance of the February payment, §1024.35(h) does not alter a borrower's obligation to make a monthly payment that the borrower owes for March. A servicer, however, may not require that a borrower make the March payment as a condition for complying with its obligations under §1024.35 with respect to the notice of error on the February payment.*

Effect on Servicer Remedies [12 CFR § 1024.35(i)]

Adverse Information

This section provides that a servicer may not furnish adverse information regarding any payment that is the subject of a notice of error to any consumer reporting agency for 60 days after receipt of a notice of error.

Ability to Pursue Foreclosure

A servicer's obligation to comply with the requirements would not prohibit a lender or servicer from pursuing any remedies, including proceeding with a foreclosure sale, permitted by the applicable mortgage loan instrument.

The regulation requires servicers to establish procedures that they must follow for reviewing loss mitigation applications. Servicers are capable of complying with the requirements prior to a foreclosure sale. Nothing in this proposed requirement affects the validity or enforceability of the

mortgage loan or lien. Further, a servicer has the opportunity to retain its remedies when a borrower submits a completed application for a loss mitigation option. A servicer may establish a deadline by which a borrower must submit a completed application for a loss mitigation option, and, so long as the servicer fulfills its duty to evaluate the borrower for a loss mitigation option before the date of a foreclosure sale, a servicer may comply with the requirements without suspending the foreclosure sale.

Regulatory Text – Effect on Servicer Remedies [12 CFR § 1024.35(i)]

(i) ***Effect on servicer remedies***

(1) ***Adverse information.*** *After receipt of a notice of error, a servicer may not, for 60 days, furnish adverse information to any consumer reporting agency regarding any payment that is the subject of the notice of error.*

(2) ***Remedies permitted.*** *Except as set forth in this section with respect to an assertion of error under paragraph (b)(9) or (10) of this section, nothing in this section shall limit or restrict a lender or servicer from pursuing any remedy it has under applicable law, including initiating foreclosure or proceeding with a foreclosure sale.*

Regulatory Commentary – Effect on Servicer Remedies [12 CFR § 1024.35(i)]

The regulation does not offer any commentary for this section.

Section 23: 12 CFR § 1024.36
Requests for Information

Introduction

This section sets forth requirements for servicers to respond to information requests from borrowers with respect to their mortgage loans. Readers will find that this portion of the regulation follows the patterns set forth in the error resolution requirements. The CFPB believes that it serves the interests of borrowers and servicers alike to establish a uniform regulatory regime for all requests.

Information Requests [12 CFR § 1024.36(a)]

Synopsis

This section requires a servicer to comply with the requirements for an information request from a borrower that includes the borrower's name, enables the servicer to identify the borrower's mortgage loan account, and states the information the borrower is requesting for the borrower's mortgage loan account.

Qualified Written Requests

This section requires a servicer to honor a qualified written request. The CFPB intended to assure that servicer obligations applicable to qualified written requests were the same as requirements applicable to error resolution requests under this section.

Other sections of this new regulation language define the term "qualified written request." A qualified written request that requests information relating to the servicing of a mortgage loan is a request for information for which a servicer must comply with all requirements.

Oral Information Requests

Servicers must comply with this section solely with respect to written requests for information. While borrowers may continue to raise information requests orally, servicers will not be required to comply with the formal requirements for such requests.

Borrower's Representative

RESPA states that a qualified written request may be provided by a "borrower (or an agent of the borrower)." This was discussed elsewhere in this manual and the regulation, and we have chosen to omit any further discussion of this issue.

Information Subject to Information Request Procedures

RESPA requires servicers to respond to qualified written requests that request information relating to the servicing of a loan. The regulatory language provides that any information requested by a borrower with respect to the borrower's mortgage loan is subject to the information request requirements.

This section has mechanisms in place to limit abuse (see below) and to protect confidential communications. The CFPB states that servicers need not treat borrowers' requests for payoff balances as requests for information.

Owner or Assignee

RESPA states that a servicer shall not fail to provide information regarding the owner or assignee of a mortgage loan within ten business days of a borrower's request. The commentary clarifies that if a borrower requests information regarding the owner or assignee of a mortgage loan, a servicer complies with its obligations by identifying the entity that holds the legal obligation to receive payments from a mortgage loan.

Regulatory Text – Information Request [12 CFR § 1024.36(a)]

*(a) **Information request.** A servicer shall comply with the requirements of this section for any written request for information from a borrower that includes the name of the borrower, information that enables the servicer to identify the borrower's mortgage loan account, and states the information the borrower is requesting with respect to the borrower's mortgage loan. A request on a payment coupon or other payment form supplied by the servicer need not be treated by the servicer as a request for information. A request for a payoff balance need not be treated by the servicer as a request for information. A qualified written request that requests information relating to the servicing of the mortgage loan is a request for information for purposes of this section, and a servicer must comply with all requirements applicable to a request for information with respect to such qualified written request.*

Regulatory Commentary – Information Request [12 CFR § 1024.36(a)

*1. **Borrower's representative.** An information request is submitted by a borrower if the information request is submitted by an agent of the borrower. A servicer may undertake reasonable procedures to determine if a person that claims to be an agent of a borrower has authority from the borrower to act on the borrower's behalf, for example, by requiring that a person that claims to be an agent of the borrower provide documentation from the borrower stating that the purported agent is acting on the borrower's behalf. Upon receipt of such documentation, the servicer shall treat the request for information as having been submitted by the borrower.*

*2. **Owner or assignee of a mortgage loan.** A servicer complies with §1024.36(d) by responding to an information request for the owner or assignee of a mortgage loan by identifying the person on whose behalf the servicer receives payments from the borrower. Although investors or guarantors, including among others the Federal National Mortgage Association, the Federal Home Loan*

Mortgage Corporation, or the Government National Mortgage Association, may be exposed to risks related to the mortgage loans held by a trust either in connection with an investment in securities issued by the trust or the issuance of a guaranty agreement to the trust, such investors or guarantors are not the owners or assignees of the mortgage loans solely as a result of their roles as such. In certain circumstances, however, a party such as a guarantor may assume multiple roles for a securitization transaction. For example, the Federal National Mortgage Association may act as trustee, master servicer, and guarantor in connection with a securitization transaction in which a trust owns a mortgage loan subject to a request. In this example, because the Federal National Mortgage Association is the trustee of the trust that owns the mortgage loan, a servicer complies with §1024.36(d) by responding to a borrower's request for information regarding the owner or assignee of the mortgage loan by providing the name of the trust, and the name, address, and appropriate contact information for the Federal National Mortgage Association as the trustee. The following examples identify the owner or assignee for different forms of mortgage loan ownership:

i. A servicer services a mortgage loan that is owned by the servicer, or an affiliate of the servicer, in portfolio. The servicer therefore receives the borrower's payments on behalf of itself or its affiliate. A servicer complies with §1024.36(d) by responding to a borrower's request for information regarding the owner or assignee of the mortgage loan with the name, address, and appropriate contact information for the servicer or the affiliate, as applicable.

ii. A servicer services a mortgage loan that has been securitized. In general, in a securitization transaction, a special purpose vehicle, such as a trust, is the owner or assignee of a mortgage loan. Thus, the servicer receives the borrower's payments on behalf of the trust. If a securitization transaction is structured such that a trust is the owner or assignee of a mortgage loan and the trust is administered by an appointed trustee, a servicer complies with §1024.36(d) by responding to a borrower's request for information regarding the owner or assignee of the mortgage loan by providing the borrower with the name of the trust and the name, address, and appropriate contract information for the trustee. Assume, for example, a mortgage loan is owned by Mortgage Loan Trust, Series ABC-1, for which XYZ Trust Company is the trustee. The servicer complies with §1024.36(d) by responding to a borrower's request for information regarding the owner or assignee of the mortgage loan by identifying the owner as Mortgage Loan Trust, Series ABC-1, and providing the name, address, and appropriate contact information for XYZ Trust Company as the trustee.

Contact Information for Borrowers to Request Information [12 CFR § 1024.36(b)]

Synopsis

Similar to the error resolution portion of the regulation, a servicer may establish an exclusive address that a borrower must use to request information. If a servicer chooses this approach, the servicer must provide the borrower an appropriate notice. If a servicer did not designate an address that a borrower must use to request information, then the servicer must respond to an information request received at any office of the servicer.

Servicers that designate addresses for receipt of requests for information must post the designated address on any website maintained by the servicer if the servicer lists any contact address for the servicer. In addition, the address must be provided to the borrower in any communication in which the servicer provides the borrower with contact information for assistance.

Addresses for Error Resolution and Information Requests

The proposal requires a servicer to use the same telephone number and address it designates for receiving notices of error for receiving information requests.

Internet Intake of Information Requests

A servicer is not required to establish a process for receiving information requests through email, website form, or other online methods. If a servicer establishes a process for receiving information requests through these methods, the servicer can designate it as the only online intake process that a borrower can use to request information. A servicer would not be required to provide a written notice to a borrower in order to gain the benefit of the online process being considered the exclusive online process for receiving information requests.

A servicer's decision to accept requests for information through an online intake method shall be in addition to, not in place of, any processes for receiving information requests by phone or mail.

Regulatory Text – Contact Information for Borrowers to Request Information [12 CFR § 1024.36(b)]

*(b) **Contact information for borrowers to request information.** A servicer may, by written notice provided to a borrower, establish an address that a borrower must use to request information in accordance with the procedures in this section. The notice shall include a statement that the borrower must use the established address to request information. If a servicer designates a specific address for receiving information requests, a servicer shall designate the same address for receiving notices of error pursuant to §1024.35(c). A servicer shall provide a written notice to a borrower before any change in the address used for receiving an information request. A servicer that designates an address for receipt of information requests must post the designated address on any Web site maintained by the servicer if the Web site lists any contact address for the servicer.*

Regulatory Commentary – Contact Information for Borrowers to Request Information [12 CFR § 1024.36(b)]

*1. **Exclusive address not required.** A servicer is not required to designate a specific address that a borrower must use to request information. If a servicer does not designate a specific address that a borrower must use to request information, a servicer must respond to an information request received by any office of the servicer.*

*2. **Notice of an exclusive address.** A notice establishing an address that a borrower must use to request information may be included with a different disclosure, such as a notice of transfer. The notice is subject to the clear and conspicuous requirement in §1024.32(a)(1). If a servicer establishes an address that a borrower must use to request information, a servicer must provide that address to the borrower in the following contexts:*

i. The written notice designating the specific address, required pursuant to §1024.35(c) and §1024.36(b).

ii. Any periodic statement or coupon book required pursuant to 12 CFR 1026.41.

iii. Any Web site the servicer maintains in connection with the servicing of the loan.

iv. Any notice required pursuant to §§1024.39 or .41 that includes contact information for assistance.

3. ***Multiple offices.*** *A servicer may designate multiple office addresses for receiving information requests. However, a servicer is required to comply with the requirements of §1024.36 with respect to an information request received at any such address regardless of whether that specific address was provided to a specific borrower requesting information. For example, a servicer may designate an address to receive information requests for borrowers located in California and a separate address to receive information requests for borrowers located in Texas. If a borrower located in California requests information through the address used by the servicer for borrowers located in Texas, the servicer is still considered to have received an information request and must comply with the requirements of §1024.36.*

4. ***Internet intake of information requests.*** *A servicer may, but need not, establish a process for receiving information requests through email, Web site form, or other online intake methods. Any such online intake process shall be in addition to, and not in lieu of, any process for receiving information requests by mail. The process or processes established by the servicer for receiving information requests through an online intake method shall be the exclusive online intake process or processes for receiving information requests. A servicer is not required to provide a separate notice to a borrower to establish a specific online intake process as an exclusive online process for receiving information requests.*

Acknowledgment of Receipt [12 CFR § 1024.36(c)]

Synopsis

A servicer must provide a borrower an acknowledgement of an information request within five days (excluding legal public holidays, Saturdays, and Sundays) of receiving an information request.

Regulatory Text – Acknowledgment of Receipt [12 CFR § 1024.36(c)]

(c) Acknowledgment of receipt*. Within five days (excluding legal public holidays, Saturdays, and Sundays) of a servicer receiving an information request from a borrower, the servicer shall provide to the borrower a written response acknowledging receipt of the information request.*

Regulatory Commentary – Acknowledgment of Receipt [12 CFR § 1024.36(c)]

The regulation does not offer any commentary for this section.

Response to Information Request [12 CFR § 1024.36(d)]

Synopsis

The CFPB included this section to set forth requirements on servicers for responding to information requests.

36(d)(1) Investigation and Response Requirements

A servicer must respond to an information request within 30 days by either (i) providing the borrower with the requested information and contact information for further assistance, or (ii) conducting a reasonable search for the requested information and providing the borrower with a written notification that states that the servicer has determined that the requested information is not available or cannot reasonably be obtained by the servicer, the basis for the determination, and contact information for further assistance.

Because the final rule requires borrowers to submit information requests in writing, the CFPB believes it is appropriate to require that servicers respond to borrowers' information requests in writing. The servicer's contact information must include a telephone number.

Information Not Available

Information should not be considered as available to a servicer if the information is not in the servicer's possession or control or the servicer cannot retrieve the information in the ordinary course of business through reasonable efforts.

The CFPB includes this comment because it believes that burden for information requests will increase greatly if a servicer is required to undertake an investigation for documents that are not in a servicer's possession or control. The same inefficiency exists even if information is in a servicer's possession or control but, for appropriate business reasons, is stored in a medium that is not accessible by a servicer in the ordinary course of business.

12 CFR § 1024.36(d)(2) Time Limits

12 CFR § 36(d)(2)(i) Limit Change

RESPA requires a servicer to investigate and respond to a qualified written request within 30 days (excluding legal public holidays, Saturdays, and Sundays).

Shortened Time Limit to Provide Information Regarding the Identity of the Owner or Assignee

The Dodd-Frank Act added a section to RESP which sets forth a ten business day limitation on a servicer to respond to a borrower's request for information regarding the owner or assignee of a mortgage loan. The ten business days do not include legal holidays, Saturdays, and Sundays.

Extensions of Time Limits

RESPA permits servicers to extend the time for responding to a qualified written request by 15 days if, before the end of the 30-day period, the servicer notifies the borrower of the reasons for the extension. The CFPB implemented this provision. The extension allowance to information requests does not apply to requests for the owner or assignee of a mortgage loan.

Regulatory Text – Response to Information Request [12 CFR § 1024.36(d)]

(d) ***Response to information request***

(1) ***Investigation and response requirements.*** *Except as provided in paragraphs (e) and (f) of this section, a servicer must respond to an information request by either:*

(i) Providing the borrower with the requested information and contact information, including a telephone number, for further assistance in writing; or

(ii) Conducting a reasonable search for the requested information and providing the borrower with a written notification that states that the servicer has determined that the requested information is not available to the servicer, provides the basis for the servicer's determination, and provides contact information, including a telephone number, for further assistance.

(2) ***Time limits***

(i) ***In general.*** *A servicer must comply with the requirements of paragraph (d)(1) of this section:*

(A) Not later than 10 days (excluding legal public holidays, Saturdays, and Sundays) after the servicer receives an information request for the identity of, and address or other relevant contact information for, the owner or assignee of a mortgage loan; and

(B) For all other requests for information, not later than 30 days (excluding legal public holidays, Saturdays, and Sundays) after the servicer receives the information request.

(ii) ***Extension of time limit.*** *For requests for information governed by the time limit set forth in paragraph (d)(2)(i)(B) of this section, a servicer may extend the time period for responding by an additional 15 days (excluding legal public holidays, Saturdays, and Sundays) if, before the end of the 30-day period, the servicer notifies the borrower of the extension and the reasons for the extension in writing. A servicer may not extend the time period for requests for information governed by paragraph (d)(2)(i)(A) of this section.*

Regulatory Commentary – Response to Information Request [12 CFR § 1024.36(d)]

Paragraph 36(d)(1)(ii).

1. ***Information not available.*** *Information is not available if:*

i. The information is not in the servicer's control or possession, or

ii. The information cannot be retrieved in the ordinary course of business through reasonable efforts.

*2. **Examples.** The following examples illustrate when information is available (or not available) to a servicer under §1024.36(d)(1)(ii):*

*i. **A borrower requests a copy of a telephonic communication with a servicer.** The servicer's personnel have access in the ordinary course of business to audio recording files with organized recordings or transcripts of borrower telephone calls and can identify the communication referred to by the borrower through reasonable business efforts. The information requested by the borrower is available to the servicer.*

*ii. **A borrower requests information stored on electronic back-up media.** Information on electronic back-up media is not accessible by the servicer's personnel in the ordinary course of business without undertaking extraordinary efforts to identify and restore the information from the electronic back-up media. The information requested by the borrower is not available to the servicer.*

*iii. **A borrower requests information stored at an offsite document storage facility.** A servicer has a right to access documents at the offsite document storage facility and servicer personnel can access those documents through reasonable efforts in the ordinary course of business. The information requested by the borrower is available to the servicer assuming that the information can be found within the offsite documents with reasonable efforts.*

Alternative Compliance [12 CFR § 1024.36(e)]

Synopsis

A servicer is not required to comply with the requirements of paragraphs (c) and (d) if the information requested by a borrower is provided to the borrower within five days along with contact information the borrower can use for further assistance. All servicer responses must be in writing.

Regulatory Text – Response to Information Request [12 CFR § 1024.36(d)]

*(e) **Alternative compliance.** A servicer is not required to comply with paragraphs (c) and (d) of this section if the servicer provides the borrower with the information requested and contact information, including a telephone number, for further assistance in writing within five days (excluding legal public holidays, Saturdays, and Sundays) of receiving an information request.*

Regulatory Commentary – Response to Information Request [12 CFR § 1024.36(d)]

The regulation does not offer any commentary for this section.

Requirements not Applicable [12 CFR § 1024.36(f)]

In General [12 CFR § 1024.36(f)(1)]

A servicer is not required to comply with the information request requirements if the servicer reasonably makes certain determinations. The specifics are discussed below.

12 CFR § 1024.36(f)(1)(i) Substantially the Same

A servicer is not required to comply with the information request requirements for an information request that requests information that is substantially the same as information previously requested by or on behalf of the borrower, and for which the servicer has previously complied with its obligations. The commentary clarifies that a borrower's request for a type of information that can change over time should not be considered substantially the same as a previous request. This section ensures that a servicer is not required to expend resources conducting duplicative searches for documents.

12 CFR § 1024.36(f)(1)(ii) Confidential, Proprietary, General Corporation Information

Servicers need not provide borrowers with information that is confidential, proprietary or privileged. This would frustrate the consumer protection purposes of RESPA to require that servicers devote resources to determining how to respond to information requests for confidential, proprietary, or privileged information that generally would not benefit the borrower, but might pose considerable disclosure risk to the servicer.

The CFPB does not believe that pooling and servicing agreements are typically kept confidential, however, to the extent that a borrower requests such agreements, a servicer is not required to comply with the requirements if the servicer reasonably determines that any of the exclusions set forth in this section apply.

12 CFR § 1024.36(f)(1)(iii) Information Not Related to Borrower's Account

A servicer is not required to comply with the information request requirements with respect to information requests that are not directly related to the borrower's mortgage loan account.

The point of this section is to assure that servicers' resources are focused on securing relevant information for borrowers by excluding requests for information that are not relevant to the borrower's account. The commentary includes examples of information that is not directly related to a borrower's loan account.

12 CFR § 1024.36(f)(1)(iv) Overbroad or Unduly Burdensome

A servicer is not required to comply with the request for information requirements for a request for information that is overbroad or unduly burdensome.

An information request is overbroad if a borrower requests a servicer provide an unreasonable volume of documents or information to a borrower.

An information request is unduly burdensome if a diligent servicer could not respond to the request without either exceeding the maximum timeframe permitted by the regulation or incurring costs (or dedicating resources) that would be unreasonable in light of the circumstances.

The rule states that if a servicer can identify a valid information request in a submission that is otherwise overbroad or unduly burdensome, the servicer is required to respond to the information request that it can identify.

The CFPB does not believe that the information request procedures should replace or supplant civil litigation document requests and should not be used as a forum for pre-litigation discovery.

12 CFR §1024.36(f)(1)(v) Untimely Information Requests

A servicer is not required to comply with the information request requirements for an untimely information request, which is an information request delivered to the servicer more than one year after either servicing for the mortgage loan that is the subject of the request was transferred by that servicer to a transferee servicer or the mortgage loan amount was paid in full, whichever date is applicable.

Notice to Borrower [12 CFR § 1024.36(f)(2)]

If a servicer determines that it is not required to comply with the information request requirements, the servicer must provide a notice to the borrower informing the borrower of the servicer's determination. The servicer must send the notice not later than five days (excluding legal public holidays, Saturdays, and Sundays) after its determination and the notice must set forth the basis upon which the servicer has made the determination, noting the applicable provision.

Regulatory Text – Requirements not Applicable [12 CFR § 1024.36(f)]

(f) ***Requirements not applicable***

(1) ***In general.*** *A servicer is not required to comply with the requirements of paragraphs (c) and (d) of this section if the servicer reasonably determines that any of the following apply:*

(i) ***Duplicative information.*** *The information requested is substantially the same as information previously requested by the borrower for which the servicer has previously complied with its obligation to respond pursuant to paragraphs (c) and (d) of this section.*

(ii) ***Confidential, proprietary or privileged information.*** *The information requested is confidential, proprietary or privileged.*

(iii) ***Irrelevant information.*** *The information requested is not directly related to the borrower's mortgage loan account.*

(iv) ***Overbroad or unduly burdensome information request.*** *The information request is overbroad or unduly burdensome. An information request is overbroad if a borrower requests that the servicer provide an unreasonable volume of documents or information to a borrower. An information request is unduly burdensome if a diligent servicer could not respond to the information request without either exceeding the maximum time limit*

permitted by paragraph (d)(2) of this section or incurring costs (or dedicating resources) that would be unreasonable in light of the circumstances. To the extent a servicer can reasonably identify a valid information request in a submission that is otherwise overbroad or unduly burdensome, the servicer shall comply with the requirements of paragraphs (c) and (d) of this section with respect to that requested information.

(v) ***Untimely information request.*** *The information request is delivered to a servicer more than one year after:*

(A) Servicing for the mortgage loan that is the subject of the information request was transferred from the servicer receiving the request for information to a transferee servicer; or

(B) The mortgage loan is discharged.

(2) ***Notice to borrower.*** *If a servicer determines that, pursuant to this paragraph (f), the servicer is not required to comply with the requirements of paragraphs (c) and (d) of this section, the servicer shall notify the borrower of its determination in writing not later than five days (excluding legal public holidays, Saturdays, and Sundays) after making such determination. The notice to the borrower shall set forth the basis under paragraph (f)(1) of this section upon which the servicer has made such determination.*

Regulatory Commentary – Requirements not Applicable [12 CFR § 1024.36(f)]

Paragraph 36(f)(1)(i).

1. A borrower's request for a type of information that can change over time is not substantially the same as a previous information request for the same type of information if the subsequent request covers a different time period than the prior request.

Paragraph 36(f)(1)(ii).

1. Confidential, proprietary or privileged information. A request for confidential, proprietary or privileged information of a servicer is not an information request for which the servicer is required to comply with the requirements of §1024.36(c) and (d). Confidential, proprietary or privileged information may include information requests relating to, for example:

i. Information regarding management or profitability of a servicer, including information provided to investors in the servicer.

ii. Compensation, bonuses, or personnel actions relating to servicer personnel, including personnel responsible for servicing a borrower's mortgage loan account;

iii. Records of examination reports, compliance audits, borrower complaints, and internal investigations or external investigations; or

iv. Information protected by the attorney-client privilege.

Paragraph 36(f)(1)(iii).

1. ***Examples of irrelevant information.*** *The following are examples of irrelevant information:*

i. Information that relates to the servicing of mortgage loans other than a borrower's mortgage

loan, including information reported to the owner of a mortgage loan regarding individual or aggregate collections for mortgage loans owned by that entity;

ii. The servicer's training program for servicing personnel;

iii. The servicer's servicing program guide; or

iv. Investor instructions or requirements for servicers regarding criteria for negotiating or approving any program with a borrower, including any loss mitigation option.

Paragraph 36(f)(1)(iv).

1. ***Examples of overbroad or unduly burdensome requests for information.*** *The following are examples of requests for information that are overbroad or unduly burdensome:*

i. Requests for information that seek documents relating to substantially all aspects of mortgage origination, mortgage servicing, mortgage sale or securitization, and foreclosure, including, for example, requests for all mortgage loan file documents, recorded mortgage instruments, servicing information and documents, and sale or securitization information and documents;

ii. Requests for information that are not reasonably understandable or are included with voluminous tangential discussion or assertions of errors;

iii. Requests for information that purport to require servicers to provide information in specific formats, such as in a transcript, letter form in a columnar format, or spreadsheet, when such information is not ordinarily stored in such format; and

iv. Requests for information that are not reasonably likely to assist a borrower with the borrower's account, including, for example, a request for copies of the front and back of all physical payment instruments (such as checks, drafts, or wire transfer confirmations) that show payments made by the borrower to the servicer and payments made by a servicer to an owner or assignee of a mortgage loan.

Payment Requirement Limitations [12 CFR § 1024.36(g)]

Synopsis

This section prohibits a servicer from charging a fee, or requiring a borrower to make any payment that may be owed on a borrower's account as a condition of responding to an information request.

Regulatory Text – Payment Requirement Limitations [12 CFR § 1024.36(g)]

(g) ***Payment requirement limitations***

(1) ***Fees prohibited.*** Except as set forth in paragraph (g)(2) of this section, a servicer shall not charge a fee, or require a borrower to make any payment that may be owed on a borrower's account, as a condition of responding to an information request.

(2) ***Fee permitted.*** Nothing in this section shall prohibit a servicer from charging a fee for providing a beneficiary notice under applicable State law, if such a fee is not otherwise prohibited by applicable law.

Regulatory Commentary – Payment Requirement Limitations [12 CFR § 1024.36(g)]

The regulation does not offer any commentary for this section.

Servicer Remedies [12 CFR § 1024.36(h)]

Synopsis

The existence of an outstanding information request does not prohibit a servicer from furnishing adverse information to any consumer reporting agency or from pursuing any remedies, including proceeding with a foreclosure sale, permitted by the applicable mortgage loan instrument. This is consistent with RESPA which prohibits servicers from furnishing adverse information only as to qualified written requests that assert an error with respect to the borrower's payments, but not to a qualified written request that requests information.

Regulatory Text - Servicer Remedies [12 CFR § 1024.36(h)]

(h) ***Servicer remedies.*** *Nothing in this section shall prohibit a servicer from furnishing adverse information to any consumer reporting agency or pursuing any of its remedies, including initiating foreclosure or proceeding with a foreclosure sale, allowed by the underlying mortgage loan instruments, during the time period that response to an information request notice is outstanding.*

Regulatory Commentary - Servicer Remedies [12 CFR § 1024.36(h)]

The regulation does not offer any commentary for this section.

Section 24: 12 CFR § 1024.37
Force-Placed Insurance

Introduction

The Dodd-Frank Act amended RESPA to establish servicer duties with respect to servicers' purchase of force-placed insurance on a property securing a federally related mortgage loan. RESPA now states that a servicer shall not obtain force-placed insurance unless there is a reasonable basis to believe the borrower has failed to comply with the loan contract's requirements to maintain property insurance.

RESPA requires servicers to:

- provide two written notices to a borrower over a notification period lasting at least 45 days before imposing a charge for force-placed insurance on the borrower;
- accept any reasonable form of written confirmation from a borrower of existing insurance coverage; and
- within 15 days of the receipt of confirmation of a borrower's existing insurance coverage, terminate force-placed insurance and refund all force-placed insurance premiums paid by the borrower during any period during which the borrower's insurance coverage and the force-placed insurance coverage were both in effect, as well as any related fees charged to the borrower's account with respect to force-placed insurance during that period.

No provisions of this rule prohibit a servicer from providing simultaneous or concurrent notice of a lack of flood insurance pursuant to the Flood Disaster Protection Act of 1973. All charges related to force-placed insurance imposed on a borrower by or through a servicer, other than charges subject to State regulation as the business of insurance, must be bona fide and reasonable.

RESPA imposes obligations upon the servicing of federally related mortgage loans that are intended to protect borrowers. The obligations the Dodd-Frank Act established with respect to servicers' purchase of force-placed insurance were intended to impose, at minimum, (1) a duty to help borrowers avoid unwarranted and unnecessary charges related to force-placed insurance through both direct limitations on certain charges and several procedural safeguards; and (2) a duty to provide borrowers with reasonably accurate information about servicers' grounds for purchasing force-placed insurance and the financial impact that such purchase could have on the borrowers, in order to encourage borrowers to take appropriate steps to maintain their hazard insurance policies.

Definition of Force-Placed Insurance [12 CFR § 1024.37(a)]

In General [12 CFR § 1024.37(a)(1)]

The term "force-placed insurance" means hazard insurance obtained by a servicer on behalf of the owner or assignee of a mortgage loan on a property securing such loan.

This section does not incorporate language from the statute referring to a borrower's failure to maintain or renew hazard insurance as required under the terms of the mortgage. The force-placed insurance provisions expressly contemplate that the protections apply in circumstances where a borrower, in fact, has hazard insurance in place.

The CFPB added language to the definition of the term "force-placed insurance" to describe the insurance as being obtained by a servicer "on behalf of the owner or assignee of a mortgage loan on a property securing such loan." This language was intended to distinguish force-placed insurance from situations in which a servicer renews borrowers' own hazard insurance policies.

Types of Insurance Not Considered Force-Placed Insurance [12 CFR § 1024.37(a)(2)]

Flood Insurance [12 CFR § 1024.37(a)(2)(i)]

Insurance to protect against flood loss obtained by a servicer as required by the Flood Disaster Protection Act of 1973 is not force-placed insurance for the purposes of this rule.

Other Exceptions [12 CFR §§ 1024.37(a)(2)(ii) and (iii)]

Hazard insurance obtained by a borrower but renewed by the borrower's servicer is not force-placed insurance. In this situation, a servicer is simply renewing a borrower's own hazard insurance under these circumstances and therefore this is not "force-placed insurance" as set forth in RESPA.

The CFPB's force-placed insurance regulations are not intended to regulate the type of hazard insurance a servicer obtains on behalf of the owner or assignee of a mortgage loan to insure the property securing such loan. But if a servicer attempts to seek payment from a borrower for such insurance, the CFPB's force-placed regulations will apply.

Regulatory Text – Definition of Force-Placed Insurance [12 CFR § 1024.37(a)]

(a) ***Definition of force-placed insurance***

(1) ***In general.*** *For the purposes of this section, the term "force-placed insurance" means hazard insurance obtained by a servicer on behalf of the owner or assignee of a mortgage loan that insures the property securing such loan.*

(2) ***Types of insurance not considered force-placed insurance.*** *The following insurance does not constitute "force-placed insurance" under this section:*

(i) Hazard insurance required by the Flood Disaster Protection Act of 1973.

(ii) Hazard insurance obtained by a borrower but renewed by the borrower's servicer as described in §1024.17(k)(1), (2), or (5).

(iii) Hazard insurance obtained by a borrower but renewed by the borrower's servicer at its discretion, if the borrower agrees.

Regulatory Commentary – Definition of Force-Placed Insurance [12 CFR § 1024.37(a)]

Paragraph 37(a)(2)(iii).

1. Servicer's discretion. Hazard insurance paid by a servicer at its discretion refers to circumstances in which a servicer pays a borrower's hazard insurance even though the servicer is not required by §1024.17(k)(1), (2), or (5) to do so.

Basis for Charging a Borrower for Force-Placed Insurance [12 CFR § 1024.37(b)]

Synopsis

A servicer of a federally related mortgage loan shall not obtain force-placed insurance unless there is a reasonable basis to believe the borrower has failed to comply with the loan contract's requirements to maintain property insurance. A servicer may not obtain force-placed insurance unless the servicer has a reasonable basis to believe that the borrower has failed to comply.

When a servicer purchases force-placed insurance, but does not charge a borrower for the insurance, the servicer does not "obtain" force-placed insurance within the meaning of RESPA. RESPA establishes that a servicer of a federally related mortgage loan shall not be construed as having a reasonable basis for obtaining force-placed insurance unless the requirements of RESPA have been met.

Where "obtaining" is used in RESPA, the CFPB interprets the statute to mean "charging." The regulation reflects the statutory prohibition against "charging." Accordingly, the regulation provides that a servicer may not assess a premium charge or fee related to force-placed insurance unless the servicer has a reasonable basis to believe that the borrower has failed to comply with the mortgage loan contract's requirement to maintain hazard insurance.

The commentary explains the circumstances that provide a servicer with a "reasonable basis to believe" for purposes of this section. The CFPB did not provide specific examples, however, the commentary provides that information about a borrower's hazard insurance received by a servicer from a borrower, the borrower's insurance provider or insurance agent, may provide a servicer with a reasonable basis to believe that the borrower has failed to comply.

In the absence of receiving information about a borrower's hazard insurance, a servicer may satisfy the reasonable basis to believe standard if a servicer acts with reasonable diligence to ascertain a borrower's hazard insurance status, and does not receive (from the borrower or otherwise) evidence of insurance coverage.

A servicer following the notification procedure established by RESPA has acted with reasonable diligence to ascertain a borrower's hazard insurance status, but compliance with those procedural elements alone are not sufficient to provide a safe harbor. The commentary states an example of acting with reasonable diligence is one in which a servicer complies with the notification requirements, and if after complying with such requirements, the servicer does not receive evidence of insurance coverage.

Regulatory Text – Basis for Charging a Borrower for Force-Placed Insurance [12 CFR § 1024.37(b)]

(b) ***Basis for charging borrower for force-placed insurance.*** *A servicer may not assess on a borrower a premium charge or fee related to force-placed insurance unless the servicer has a reasonable basis to believe that the borrower has failed to comply with the mortgage loan contract's requirement to maintain hazard insurance.*

Regulatory Commentary – Basis for Charging a Borrower for Force-Placed Insurance [12 CFR § 1024.37(b)]

37(b) Basis for charging force-placed insurance.

1. ***Reasonable basis to believe.*** *Section §1024.37(b) prohibits a servicer from assessing on a borrower a premium charge or fee related to force-placed insurance unless the servicer has a reasonable basis to believe that the borrower has failed to comply with the loan contract's requirement to maintain hazard insurance. Information about a borrower's hazard insurance received by a servicer from the borrower, the borrower's insurance provider, or the borrower's insurance agent, may provide a servicer with a reasonable basis to believe that the borrower has either complied with or failed to comply with the loan contract's requirement to maintain hazard insurance. If a servicer receives no such information, the servicer may satisfy the reasonable basis to believe standard if the servicer acts with reasonable diligence to ascertain a borrower's hazard insurance status and does not receive from the borrower, or otherwise have evidence of insurance coverage as provided in §1024.37(c)(1)(iii). A servicer that complies with the notification requirements set forth in §1024.37(c)(1)(i) and (ii) has acted with reasonable diligence.*

Requirements for Charging Borrower Force-Placed Insurance [12 CFR § 1024.37(c)]

In General [12 CFR § 1024.37(c)(1)]

A servicer may not impose any charge on a borrower for force-placed insurance with respect to any property securing a federally related mortgage unless the servicer sends a written notice by first-class mail to a borrower that contains:

- disclosures about a borrower's obligation to maintain hazard insurance,
- a servicer's lack of evidence that a borrower has such insurance,
- a clear and conspicuous statement of how the borrower may demonstrate coverage, and
- a statement that a servicer may obtain insurance coverage at a borrower's expense if the borrower does not provide demonstration of coverage in a timely manner;

The servicer must follow that with a second written notice by first-class mail containing the same disclosures to a borrower at least 30 days after mailing the first written notice, and does not receive any demonstration of hazard insurance coverage by the end of the 15-day period beginning on the date the second written notice was sent to the borrower.

This portion is designed to implement these requirements, and establishes the 45 day period with the two disclosures as described above. For determining whether the borrower has hazard insurance in place continuously, the servicer shall take account of any grace period provided under State or other applicable law. The notices can be either delivered or mailed, at the servicer's discretion.

After the 45 day period ends, the servicer may assess the premium charge and any fees for force-placed insurance beginning on the 46th day if the servicer has fulfilled the requirements of the regulation. Unless state law prohibits it, the servicer may retroactively charge a borrower for force-placed insurance obtained during the 45-day notice period.

The CFPB has crafted notices to assist institutions in complying with this section.

A servicer may charge a borrower for force-placed insurance a servicer purchased, retroactive to the first day of any period in which the borrower did not have hazard insurance in place. The role of a grace period under applicable law in determining whether a borrower has hazard insurance in place continuously is also discussed. The commentary also discusses the meaning of the phrase "receiving verification."

A servicer may require a copy of the borrower's hazard insurance policy declaration page, the borrower's insurance certificate, the borrower's insurance policy, or other similar forms of written confirmation as the only methods of proof of insurance. A servicer may reject evidence of hazard insurance coverage submitted by the borrower if neither the borrower's insurance provider nor insurance agent provides confirmation of the insurance information submitted by the borrower, or if the terms and conditions of the borrower's hazard insurance policy do not comply with the borrower's loan contract requirements.

Content of Notice [12 CFR § 1024.37(c)(2)]

RESPA establishes the disclosures that a servicer of a federally related mortgage loan must provide in the written notices it sends to borrowers. The required items that must appear in the notice include:

- the date of the notice;
- the servicer's name and mailing address;
- the borrower's name and mailing address;
- a statement that requests the borrower to provide hazard insurance information for the borrower's property and identifies the property by its address.
- a statement that the borrower's hazard insurance is expiring or expired, as applicable, and that the servicer does not have evidence that the borrower has hazard insurance coverage past the expiration date.
- for a borrower that has more than one type of hazard insurance on the property, the servicer must identify the type of hazard insurance for which the servicer lacks evidence of coverage.
- a statement that hazard insurance is required on the borrower's property and that the servicer has obtained or will obtain, as applicable, insurance at the borrower's expense.

- a statement requesting the borrower to promptly provide the servicer with the insurance policy number and the name, mailing address and phone number of the borrower's insurance company or the borrower's insurance agent, with a description of how the borrower may provide the information requested.
- a statement that insurance the servicer obtains may cost significantly more than hazard insurance obtained by the borrower and may not provide as much coverage as hazard insurance obtained by the borrower.
- the servicer's telephone number for borrower questions.

Additional information in the same notice as the required information could obscure the most important information or tend to create information overload. Servicers may provide additional information on separate pieces of paper in the same transmittal.

Format [12 CFR § 1024.37(c)(3)]

The required disclosures have formatting requirements. Some items must be in bold text. The CFPB believes the use of bold text to bring attention to important information would make it easier for borrowers to identify promptly the purpose of the notice and to find the information quickly and efficiently.

Although the notice contains additional information that is important, the CFPB believes the usefulness of highlighting in focusing a borrower's attention on important information decreases if highlighting is used unsparingly.

While its use is not required, using MS-3A, as set forth in appendix MS-3 appears to be the best approach.

Regulatory Text – Requirements for Charging Borrower Force-Placed Insurance [12 CFR § 1024.37(c)]

(c) ***Requirements before charging borrower for force-placed insurance***

(1) ***In general.*** *Before a servicer assesses on a borrower any premium charge or fee related to force-placed insurance, the servicer must:*

(i) Deliver to a borrower or place in the mail a written notice containing the information required by paragraph (c)(2) of this section at least 45 days before a servicer assesses on a borrower such charge or fee;

(ii) Deliver to the borrower or place in the mail a written notice in accordance with paragraph (d)(1) of this section; and

(iii) By the end of the 15-day period beginning on the date the written notice described in paragraph (c)(1)(ii) of this section was delivered to the borrower or placed in the mail, not have received, from the borrower or otherwise, evidence demonstrating that the borrower has had in place, continuously, hazard insurance coverage that complies with the loan contract's requirements to maintain hazard insurance.

*(2) **Content of notice.** The notice required by paragraph (c)(1)(i) of this section shall set forth the following information:*

(i) The date of the notice;

(ii) The servicer's name and mailing address;

(iii) The borrower's name and mailing address;

(iv) A statement that requests the borrower to provide hazard insurance information for the borrower's property and identifies the property by its physical address;

(v) A statement that the borrower's hazard insurance is expiring or has expired, as applicable, and that the servicer does not have evidence that the borrower has hazard insurance coverage past the expiration date, and that, if applicable, identifies the type of hazard insurance for which the servicer lacks evidence of coverage;

(vi) A statement that hazard insurance is required on the borrower's property, and that the servicer has purchased or will purchase, as applicable, such insurance at the borrower's expense;

(vii) A statement requesting the borrower to promptly provide the servicer with insurance information;

(viii) A description of the requested insurance information and how the borrower may provide such information, and if applicable, a statement that the requested information must be in writing;

(ix) A statement that insurance the servicer has purchased or purchases:

(A) May cost significantly more than hazard insurance purchased by the borrower;

(B) Not provide as much coverage as hazard insurance purchased by the borrower;

(x) The servicer's telephone number for borrower inquiries; and

(xi) If applicable, a statement advising the borrower to review additional information provided in the same transmittal.

*(3) **Format.** A servicer must set the information required by paragraphs (c)(2)(iv), (vi), and (ix)(A) and (B) in bold text, except that the information about the physical address of the borrower's property required by paragraph (c)(2)(iv) of this section may be set in regular text. A servicer may use form MS-3A in appendix MS-3 of this part to comply with the requirements of paragraphs (c)(1)(i) and (2) of this section.*

*(4) **Additional information.** A servicer may not include any information other than information required by paragraphs (c)(2) of this section in the written notice required by paragraph (c)(1)(i) of this section. However, a servicer may provide such additional information to a borrower on separate pieces of paper in the same transmittal.*

Regulatory Commentary – Requirements for Charging Borrower Force-Placed Insurance [12 CFR § 1024.37(c)]

37(c)(1) In general.

Paragraph 37(c)(1)(i).

*1. **Assessing premium charge or fee.** Subject to the requirements of §1024.37(c)(1)(i) through (iii), if not prohibited by State or other applicable law, a servicer may charge a borrower for force-placed insurance the servicer purchased, retroactive to the first day of any period of time in which the borrower did not have hazard insurance in place.*

Paragraph 37(c)(1)(iii).

*1. **Extension of time.** Applicable law, such as State law or the terms and conditions of a borrower's insurance policy, may provide for an extension of time to pay the premium on a borrower's hazard insurance after the due date. If a premium payment is made within such time, and the insurance company accepts the payment with no lapse in insurance coverage, then the borrower's hazard insurance is deemed to have had hazard insurance coverage continuously for purposes of §1024.37(c)(1)(iii).*

*2. **Evidence demonstrating insurance.** As evidence of continuous hazard insurance coverage that complies with the loan contract's requirements, a servicer may require a copy of the borrower's hazard insurance policy declaration page, the borrower's insurance certificate, the borrower's insurance policy, or other similar forms of written confirmation. A servicer may reject evidence of hazard insurance coverage submitted by the borrower if neither the borrower's insurance provider nor insurance agent provides confirmation of the insurance information submitted by the borrower, or if the terms and conditions of the borrower's hazard insurance policy do not comply with the borrower's loan contract requirements.*

Paragraph 37(c)(2)(v).

*1. **Identifying type of hazard insurance.** If the terms of a mortgage loan contract requires a borrower to purchase both a homeowners' insurance policy and a separate hazard insurance policy to insure against loss resulting from hazards not covered under the borrower's homeowners' insurance policy, a servicer must disclose whether it is the borrower's homeowners' insurance policy or the separate hazard insurance policy for which it lacks evidence of coverage to comply with §1024.37(c)(2)(v).*

Reminder Notice [12 CFR § 1024.37(d)]

In General [12 CFR § 1024.37(d)(1)]

RESPA requires that a servicer must send two written notices to the borrower prior to charging the borrower for force-placed insurance. This section describes the second notice.

The servicer may not deliver or place this second written notice under in the mail until 30 days after delivering to the borrower or placing in the mail the first written notice. A servicer that receives no insurance information after delivering or placing in the mail the initial written notice must provide the second notice, while a servicer that does receive insurance information but is unable to verify that the borrower has hazard insurance coverage continuously must provide different disclosures. As a result, the content of the reminder notice will vary depending on the insurance information the servicer has or has not received from the borrower.

Where a borrower responds to the first notice by providing some insurance information, the CFPB believes that the reminder notice would be more useful if it contained an acknowledgement of the information these borrowers provided in response to the first notice, and informed these borrowers that the information provided was not sufficient for a servicer to verify that they had continuous coverage in place.

Content of Reminder Notice [12 CFR § 1024.37(d)(2)]

This section sets forth the information that a servicer must provide in the written reminder notice established by RESPA, to a borrower from whom the servicer has not received any insurance information.

If a servicer that has not received any insurance information from the borrower within 30 days after delivering or placing in the mail the first notice, the servicer must provide a reminder notice that contains the disclosures forth in the first notice, the date of the notice, and a statement that the notice is the second and final notice.

If a servicer has received insurance information from the borrower within 30 days after delivering to the borrower or placing in the mail the first notice, but has not been able to verify that the borrower has hazard insurance in place continuously, then the servicer must deliver or place in the mail a written notice that contains the following:

- the date of the notice;
- a statement that the notice is the second and final notice;
- the date of the notice;
- the servicer's name and mailing address;
- the borrower's name and mailing address;
- a statement that insurance the servicer obtains may cost significantly more than hazard insurance obtained by the borrower and may not provide as much coverage as hazard insurance obtained by the borrower;
- for the reminder notice only, the cost of the force-placed insurance, stated as an annual premium, or a reasonable estimate if actual pricing is not available;
- a statement that the servicer has received the hazard insurance information that the borrower provided;
- a statement that indicates to the borrower that the servicer is unable to verify that the borrower has hazard insurance in place continuously; and
- a statement that the borrower will be charged for insurance the servicer obtains for the period of time where the servicer is unable to verify hazard insurance coverage unless the borrower provides the servicer with hazard insurance information for such period.

Format [12 CFR § 1024.37(d)(3)]

As previously discussed, bold text is used to highlight certain fields. There is a model form for this disclosure that appears in the appendix. While not required, using the model form may be the best approach for compliance with this section.

Updating Notice with Borrower Information [12 CFR § 1024.37(d)(4)]

If a servicer receives hazard insurance information from a borrower after the second written notice has been put into production, the servicer is not required to update the notice so long as the notice was put into production within a reasonable time prior to the servicer delivering the notice to the borrower or placing the notice in the mail.

A servicer has a duty to ensure that the second notice contains reasonably accurate information about an individual borrower's hazard insurance status. Therefore, a servicer has a duty to update the second notice if it receives new insurance information about a borrower after sending the first written notice to the borrower. A servicer might have to prepare the written notice in advance of sending it. Accordingly, there is a safe harbor of five days to protect a servicer acting diligently from exposure to potential litigation if the information the servicer provided in the second notice turns out to be, in fact, inaccurate, due to information about a borrower's hazard insurance it receives subsequent to putting the second notice into production. The 5-day period excludes legal public holidays, Saturdays, and Sundays.

Regulatory Text - Reminder Notice [12 CFR § 1024.37(d)]

(d) *Reminder notice*

(1) ***In general.*** *The notice required by paragraph (c)(1)(ii) of this section shall be delivered to the borrower or placed in the mail at least 15 days before a servicer assesses on a borrower a premium charge or fee related to force-placed insurance. A servicer may not deliver to a borrower or place in the mail the notice required by paragraph (c)(1)(ii) of this section until at least 30 days after delivering to the borrower or placing in the mail the written notice required by paragraph (c)(1)(i) of this section.*

(2) ***Content of the reminder notice***

(i) ***Servicer receiving no insurance information.*** *A servicer that receives no hazard insurance information after delivering to the borrower or placing in the mail the notice required by paragraph (c)(1)(i) of this section must set forth in the notice required by paragraph (c)(1)(ii) of this section:*

(A) The date of the notice;

(B) A statement that the notice is the second and final notice;

(C) The information required by paragraphs (c)(2)(ii) through (xi) of this section; and

(D) The cost of the force-placed insurance, stated as an annual premium, except if a servicer does not know the cost of force-placed insurance, a reasonable estimate shall be disclosed and identified as such.

(ii) ***Servicer not receiving demonstration of continuous coverage.*** *A servicer that has received hazard insurance information after delivering to a borrower or placing in the mail the notice required by paragraph (c)(1)(i) of this section, but has not received, from the borrower or otherwise, evidence demonstrating that the borrower has had hazard insurance coverage in place continuously, must set forth in the notice required by paragraph (c)(1)(ii) of this section the following information:*

(A) The date of the notice;

(B) The information required by paragraphs (c)(2)(ii) through (iv), (x), (xi), and (d)(2)(i)(B) and (D) of this section;

(C) A statement that the servicer has received the hazard insurance information that the borrower provided;

(D) A statement that requests the borrower to provide the information that is missing;

(E) A statement that the borrower will be charged for insurance the servicer has purchased or purchases for the period of time during which the servicer is unable to verify coverage;

(3) ***Format.*** *A servicer must set the information required by paragraphs (d)(2)(i)(B) and (D) of this section in bold text. A servicer may use form MS-3B in appendix MS-3 of this part to comply with the requirements of paragraphs (d)(1) and (d)(2)(i) of this section. A servicer may use form MS-3C in appendix MS-3 of this part to comply with the requirements of paragraphs (d)(1) and (d)(2)(ii) of this section.*

(4) ***Additional information.*** *As applicable, a servicer may not include any information other than information required by paragraph (d)(2)(i) or (ii) of this section in the written notice required by paragraph (c)(1)(ii) of this section. However, a servicer may provide such additional information to a borrower on separate pieces of paper in the same transmittal.*

(5) ***Updating notice with borrower information.*** *If a servicer receives new information about a borrower's hazard insurance after a written notice required by paragraph (c)(1)(ii) of this section has been put into production, the servicer is not required to update such notice based on the new information so long as the notice was put into production a reasonable time prior to the servicer delivering the notice to the borrower or placing the notice in the mail.*

Regulatory Commentary - Reminder Notice [12 CFR § 1024.37(d)]

37(d)(1) In general.

1. When a servicer is required to deliver or place in the mail the written notice pursuant to §1024.37(d)(1), the content of the reminder notice will be different depending on the insurance information the servicer has received from the borrower. For example:

i. Assume that, on June 1, the servicer places in the mail the written notice required by §1024.37(c)(1)(i) to Borrower A. The servicer does not receive any insurance information from Borrower A. The servicer must deliver to Borrower A or place in the mail a reminder notice, with the information required by §1024.37(d)(2)(i), at least 30 days after June 1 and at least 15 days before the servicer charges Borrower A for force-placed insurance.

ii. Assume the same example, except that Borrower A provides the servicer with insurance information on June 18, but the servicer cannot verify that Borrower A has hazard insurance in place continuously based on the information Borrower A provided (e.g., the servicer cannot verify that Borrower A had coverage between June 10 and June 15). The servicer must either deliver to Borrower A or place in the mail a reminder notice, with the information required by in §1024.37(d)(2)(ii), at least 30 days after June 1 and at least 15 days before charging Borrower A for force-placed insurance it obtains for the period between June 10 and June 15.

37(d)(2) Content of reminder notice.

37(d)(2)(i) Servicer receiving no insurance information.

Paragraph 37(d)(2)(i)(D).

1. ***Reasonable estimate of the cost of force-placed insurance.*** *Differences between the amount of the estimated cost disclosed under §1024.37(d)(2)(i)(D) and the actual cost later assessed to the borrower are permissible, so long as the estimated cost is based on the information reasonably available to the servicer at the time the disclosure is provided. For example, a mortgage investor's requirements may provide that the amount of coverage for force-placed insurance depends on the borrower's delinquency status (the number of days the borrower's mortgage payment is past due). The amount of coverage affects the cost of force-placed insurance. A servicer that provides an estimate of the cost of force-placed insurance based on the borrower's delinquency status at the time the disclosure is made complies with §1024.37(d)(2)(i)(D).*

37(d)(4) Updating notice with borrower information.

1. ***Reasonable time.*** *A servicer may have to prepare the written notice required by §1024.37(c)(1)(ii) in advance of delivering or placing the notice in the mail. If the notice has already been put into production, the servicer is not required to update the notice with new insurance information received about the borrower so long as the written notice was put into production within a reasonable time prior to the servicer delivering or placing the notice in the mail. For purposes of §1024.37(d)(4), five days (excluding legal holidays, Saturdays, and Sundays) is a reasonable time.*

Renewal or Replacement of Force-Placed Insurance [12 CFR § 1024.37(e)]

In general [12 CFR § 1024.37(e)(1)]

A servicer may not charge a borrower for renewing or replacing existing force-placed insurance unless the servicer delivers or places in the mail a written notice to the borrower with the disclosures set forth in this section at least 45 days before the premium charge or any fee is assessed, and during the 45-day notice period, the servicer has not received evidence that the borrower has obtained hazard insurance.

A servicer does not have to wait until the end of the notice period before charging a borrower for the cost of renewing the force-placed insurance if a borrower has confirmed that there was a gap in coverage. The regulation permits a servicer who has renewed or replaced existing force-placed insurance during the notice period to charge a borrower for renewal or replacement promptly after a servicer receives verification that the hazard insurance obtained by a borrower did not provide a borrower with insurance coverage for any period of time following the expiration of the existing force-placed insurance.

A comment clarifies that a servicer may require a borrower to provide a form of written confirmation, and may reject evidence of coverage submitted by the borrower that is insufficient.

Content of Renewal Notice [12 CFR § 1024.37(e)(2)]

This section requires a servicer to provide a number of the disclosures set forth in the standard reminder notice detailed above. The main differences between the disclosures are that servicers must provide a statement that:

1. the servicer previously obtained insurance on the borrower's property and assessed the cost of the insurance to the borrower because the servicer did not have evidence that the borrower had hazard insurance coverage for the property; and
2. the servicer has the right to maintain insurance by renewing or replacing the insurance it previously obtained because insurance is required.

The requirement concerning provision of the cost of the force-placed insurance, stated as an annual premium, or a reasonable estimate of such cost, is replicated here.

A servicer may not include additional information in the notice. But servicers may provide additional information in the same transmittal the servicer uses to provide this notice.

Format [12 CFR § 1024.37(e)(3)]

As in previous sections, the CFPB has a model notice, complete with items in bold text. Using the standard model notice is probably in your institution's best interests.

Compliance [12 CFR § 1024.37(e)(4)]

Before the first anniversary of a servicer obtaining force-placed insurance on a borrower's property, the servicer shall deliver to the borrower or place in the mail the notice required by this portion of the regulation. The servicer is not required to comply with the notice before charging a borrower for renewing or replacing existing force-placed insurance more than once every 12 months.

Regulatory Text - Renewal or Replacement of Force-Placed Insurance [12 CFR § 1024.37(e)]

(e) ***Renewing or replacing force-placed insurance***

(1) ***In general.*** *Before a servicer assesses on a borrower a premium charge or fee related to renewing or replacing existing force-placed insurance, a servicer must:*

(i) Deliver to the borrower or place in the mail a written notice containing the information set forth in paragraph (e)(2) of this section at least 45 days before assessing on a borrower such charge or fee; and

(ii) By the end of the 45-day period beginning on the date the written notice required by paragraph (e)(1)(i) of this section was delivered to the borrower or placed in the mail, not have received, from the borrower or otherwise, evidence demonstrating that the borrower has purchased hazard insurance coverage that complies with the loan contract's requirements to maintain hazard insurance.

(iii) ***Charging a borrower before end of notice period.*** *Notwithstanding paragraphs (e)(1)(i) and (ii) of this section, if not prohibited by State or other applicable law, if a servicer has renewed or replaced existing force-placed insurance and receives evidence demonstrating that the borrower lacked insurance coverage for some period of time following the expiration of the existing force-placed insurance (including during the notice period prescribed by paragraph (e)(1) of this section), the servicer may, promptly upon receiving such evidence, assess on the borrower a premium charge or fee related to renewing or replacing existing force-placed insurance for that period of time.*

(2) ***Content of renewal notice.*** *The notice required by paragraph (e)(1)(i) of this section shall set forth the following information:*

(i) The date of the notice;

(ii) The servicer's name and mailing address;

(iii) The borrower's name and mailing address;

(iv) A statement that requests the borrower to update the hazard insurance information for the borrower's property and identifies the borrower's property by its physical address;

(v) A statement that the servicer previously purchased insurance on the borrower's property and assessed the cost of the insurance to the borrower because the servicer did not have evidence that the borrower had hazard insurance coverage for the property;

(vi) A statement that:

(A) The insurance the servicer purchased previously has expired or is expiring, as applicable; and

(B) Because hazard insurance is required on the borrower's property, the servicer intends to maintain insurance on the property by renewing or replacing the insurance it previously purchased;

(vii) A statement informing the borrower:

(A) That insurance the servicer purchases may cost significantly more than hazard insurance purchased by the borrower;

(B) That such insurance may not provide as much coverage as hazard insurance purchased by the borrower; and

(C) The cost of the force-placed insurance, stated as an annual premium, except if a servicer does not know the cost of force-placed insurance, a reasonable estimate shall be disclosed and identified as such.

(viii) A statement that if the borrower purchases hazard insurance, the borrower should promptly provide the servicer with insurance information.

(ix) A description of the requested insurance information and how the borrower may provide such information, and if applicable, a statement that the requested information must be in writing;

(x) The servicer's telephone number for borrower inquiries; and

(xi) If applicable, a statement advising a borrower to review additional information provided in the same transmittal.

(3) ***Format.*** *A servicer must set the information required by paragraphs (e)(2)(iv), (vi)(B), and (vii)(A) through (C) of this section in bold text, except that the information about the physical address of the borrower's property required by paragraph (e)(2)(iv) may be set in regular text. A servicer may use form MS-3D in appendix MS-3 of this part to comply with the requirements of paragraphs (e)(1)(i) and (2) of this section.*

(4) ***Additional information.*** *As applicable, a servicer may not include any information other than information required by paragraph (e)(2) of this section in the written notice required by paragraph (e)(1) of this section. However, a servicer may provide such additional information to a borrower on separate pieces of paper in same transmittal.*

(5) ***Frequency of renewal notices.*** *Before each anniversary of a servicer purchasing force-placed insurance on a borrower's property, the servicer shall deliver to the borrower or place in the mail the written notice required by paragraph (e)(1) of this section. A servicer is not required to provide the written notice required by paragraph (e)(1) of this section more than once a year.*

Regulatory Commentary - Renewal or Replacement of Force-Placed Insurance [12 CFR § 1024.37(e)]

37(e)(1) In general.

1. For purposes of §1024.37(e)(1), as evidence that the borrower has purchased hazard insurance coverage that complies with the loan contract's requirements, a servicer may require a borrower to provide a form of written confirmation as described in comment 37(c)(1)(iii)-2, and may reject evidence of coverage submitted by the borrower for the reasons described in comment 37(c)(1)(iii)-2.

37(e)(1)(iii) Charging before end of notice period.

1. ***Example.*** *Section 1024.37(e)(1)(iii) permits a servicer to assess on a borrower a premium charge or fee related to renewing or replacing existing force-placed insurance promptly after the servicer receives evidence demonstrating that the borrower lacked hazard insurance coverage in compliance with the loan contract's requirements to maintain hazard insurance for any period of time following the expiration of the existing force-placed insurance. To illustrate, assume that on January 2, the servicer sends the notice required by §1024.37(e)(1)(i). At 12:01 a.m. on January 12, the existing force-placed insurance the servicer had purchased on the borrower's property expires and the servicer replaces the expired force-placed insurance policy with a new policy. On February 5, the servicer receives evidence demonstrating the borrower has hazard insurance effective since 12:01 a.m. on January 31. The servicer may charge the borrower for force-placed insurance covering the period from 12:01 a.m. January 12 to 12:01 a.m. January 31, as early as February 5.*

Paragraph 37(e)(2)(vii).

1. ***Reasonable estimate of the cost of force-placed insurance.*** *The reasonable estimate requirement set forth in §1024.37(e)(2)(vii) is the same reasonable estimate requirement set forth in §1024.37(d)(2)(i)(D). See comment 37(d)(2)(i)(D)-1 regarding the reasonable estimate.*

Mailing the Notices [12 CFR § 1024.37(f)]

Synopsis

Servicers must use first-class mail to send the notices.

Regulatory Text – Mailing the Notices [12 CFR § 1024.37(f)]

*(f) **Mailing the notices.** If a servicer mails a written notice required by paragraphs (c)(1)(i), (c)(1)(ii), or (e)(1) of this section, the servicer must use a class of mail not less than first-class mail.*

Regulatory Commentary – Mailing the Notices [12 CFR § 1024.37(f)]

The regulation offers no commentary for this portion of the regulation.

Cancellation of Force-Placed Insurance [12 CFR § 1024.37(g)]

Synopsis

Within 15 days of receipt by a servicer of confirmation of a borrower's existing insurance coverage, the servicer must terminate the force-placed insurance and refund to the borrower all force-placed insurance premium charges and related fees paid by the borrower during any period in which the borrower's insurance and the force-placed insurance overlapped.

This section also requires a servicer to remove all force-placed insurance charges and related fees that the servicer has assessed to the borrower for any period during which the borrower's hazard insurance was in place from the borrower's account.

Regulatory Text – Cancellation of Force-Placed Insurance [12 CFR § 1024.37(g)]

*(g) **Cancellation of force-placed insurance.** Within 15 days of receiving, from the borrower or otherwise, evidence demonstrating that the borrower has had in place hazard insurance coverage that complies with the loan contract's requirements to maintain hazard insurance, a servicer must:*

(1) Cancel the force-placed insurance the servicer purchased to insure the borrower's property; and

(2) Refund to such borrower all force-placed insurance premium charges and related fees paid by such borrower for any period of overlapping insurance coverage and remove from the borrower's account all force-placed insurance charges and related fees for such period that the servicer has assessed to the borrower.

Regulatory Commentary – Cancellation of Force-Placed Insurance [12 CFR § 1024.37(g)]

Paragraph 37(g)(2).

1. ***Period of overlapping insurance coverage.*** *Section 1024.37(g)(2) requires a servicer to refund to a borrower all force-placed insurance premium charges and related fees paid by the borrower for any period of overlapping insurance coverage and remove from the borrower's account all force-placed insurance charges and related fees for such period. A period of overlapping insurance coverage means the period of time during which the force-placed insurance purchased by a servicer and the hazard insurance purchased by a borrower were in effect at the same time.*

Limitation on Force-Placed Insurance Charges [12 CFR § 1024.37(h)]

Synopsis

The Dodd-Frank Act amended RESPA section 6 by adding new language, which states that apart from charges subject to State regulation as the business of insurance, all charges related to force-placed insurance imposed on the borrower by or through the servicer must be bona fide and reasonable. This section of the regulation generally mirrors the statutory language by providing that except for charges subject to State regulation as the business of insurance and charges authorized by the Flood Disaster Protection Act of 1973, all charges related to force-placed insurance assessed to a borrower by or through the servicer must be bona fide and reasonable. A bona fide and reasonable charge is a charge for a service actually performed that bears a reasonable relationship to the servicer's cost of providing the service, and is not otherwise prohibited by applicable law.

Regulatory Text – Limitation on Force-Placed Insurance Charges [12 CFR § 1024.37(h)]

(h) ***Limitations on force-placed insurance charges***

(1) ***In general.*** *Except for charges subject to State regulation as the business of insurance and charges authorized by the Flood Disaster Protection Act of 1973, all charges related to force-placed insurance assessed to a borrower by or through the servicer must be bona fide and reasonable.*

(2) ***Bona fide and reasonable charge.*** *A bona fide and reasonable charge is a charge for a service actually performed that bears a reasonable relationship to the servicer's cost of providing the service, and is not otherwise prohibited by applicable law.*

Regulatory Commentary – Limitation on Force-Placed Insurance Charges [12 CFR § 1024.37(h)]

The regulation offers no commentary for this section.

Relationship to Flood Disaster Protection Act of 1973 [12 CFR § 1024.37(i)]

Synopsis

The requirements concerning force-placed insurance do not prohibit servicers from sending a simultaneous or concurrent notice of a lack of flood insurance pursuant to the Flood Disaster Protection Act (FDPA). This section provides that, if permitted by regulation under the FDPA, a servicer subject to the requirements of this regulation may deliver to the borrower or place in the mail any notice required by this regulation and the FDPA.

Both notices can be provided to borrowers in the same transmittal on separate pieces of paper.

Regulatory Text – Relationship to Flood Disaster Protection Act of 1973 [12 CFR § 1024.37(i)]

*(i) **Relationship to Flood Disaster Protection Act of 1973.** If permitted by regulation under section 102(e) of the Flood Disaster Protection Act of 1973, a servicer subject to the requirements of this section may deliver to the borrower or place in the mail any notice required by this section and the notice required by section 102(e) of the Flood Disaster Protection Act of 1973 on separate pieces of paper in the same transmittal.*

Regulatory Commentary – Relationship to Flood Disaster Protection Act of 1973 [12 CFR § 1024.37(i)]

The regulation offers no commentary for this section.

Section 25: 12 CFR § 1024.38
General Servicing Policies, Procedures, and Requirements

Synopsis

All institutions must have policies, procedures, and other requirements in place for the servicing rules. For this portion of the manual, we have chosen to include the FDIC's discussion of the requirements as they appear in the examination procedures. This language offers an excellent overview of what is expected and required regarding these issues.

FDIC Examination Manual - General Servicing Policies, Procedures, and Requirements – 12 CFR 1024.38

Servicers must maintain policies and procedures reasonably designed to achieve certain servicing-related objectives, and are subject to requirements regarding record retention and the ability to create servicing files.

These requirements apply to any mortgage loan, as that term is defined in 12 CFR 1024.31, except that they do not apply to (i) small servicers, (ii) reverse mortgage transactions, as that term is defined in 12 CFR 1024.31, or (iii) mortgage loans for which the servicer is a qualified lender. As noted above, an institution qualifies as a small servicer if it either (a) services, together with any affiliates, 5,000 or fewer mortgage loans, as that term is defined in 12 CFR 1026.41(a)(1), for all of which the institution (or an affiliate) is the creditor or assignee, (b) is a Housing Finance Agency, as defined in 24 CFR 266.5, or (c) is a nonprofit entity (defined in 12 CFR 1026.41(e)(4)(ii)(C)(*1*)) that services 5,000 or fewer mortgage loans, including any mortgage loans serviced on behalf of associated nonprofit entities (defined in 12 CFR 1026.41(e)(4)(ii)(C)(*2*)), for all of which the servicer or an associated nonprofit entity is the creditor. 19

Qualified lenders are those defined to be qualified lenders under the Farm Credit Act of 1971 and the Farm Credit Administration's accompanying regulations set forth at 12 CFR 617.7000 *et seq*.20

Reasonable Policies and Procedures – 12 CFR 1024.38(a)

Servicers must maintain policies and procedures reasonably designed to meet the objectives identified in 12 CFR 1024.38(b). Servicers may determine the specific policies and procedures they will adopt and the methods for implementing them in light of the size, nature, and scope of the servicers' operations, including, for example, the volume and aggregate unpaid principal balance of mortgage loans serviced, the credit quality (including the default risk) of the mortgage loans serviced, and the servicer's history of consumer complaints. "Procedures" refer to the servicer's actual practices for achieving the objective.

Objectives – 12 CFR 1024.38(b)

Servicers are required to maintain policies and procedures that are reasonably designed to achieve the following objectives.

I. ***Accessing and providing timely and accurate information.*** The servicer's policies and procedures must be reasonably designed to ensure that the servicer can:

A. Provide accurate and timely disclosures to the borrower.

B. Investigate, respond to, and make corrections in response to borrowers' complaints. These policies and procedures must be reasonably designed to ensure that the servicer can promptly obtain information from service providers to facilitate investigation and correction of errors resulting from actions of service providers.

C. Provide a borrower with accurate and timely information and documents in response to the borrower's request for information with respect to the borrower's mortgage loan.

D. Provide owners and assignees of mortgage loans with accurate information and documents about all the mortgage loans that they own. This includes information about a servicer's evaluations of borrowers for loss mitigation options and a servicer's loss mitigation agreements with borrowers, including loan modifications. Such information includes, for example: (a) a loan modification's date, terms, and features; (b) the components of any capitalized arrears; (c) the amount of any servicer advances; and (d) any assumptions regarding the value of property used in evaluating any loss mitigation options.

E. Submit documents or filings required for a foreclosure process, including documents or filings required by a court, that reflect accurate and current information and that comply with applicable law.

F. Upon notification of a borrower's death, promptly identify and facilitate communication with the borrower's successor in interest concerning the secured property.

II. ***Properly evaluating loss mitigation applications.*** The servicer's policies and procedures must be reasonably designed to ensure that the servicer can:

A. Provide accurate information regarding loss mitigation options available to the borrower from the owner or assignee of the borrower's loan.

B. Identify specifically all loss mitigation options available to a borrower from the owner or assignee of the borrower's mortgage loan. This includes identifying, with respect to each owner or assignee all of the loss mitigation options the servicer may consider when evaluating a borrower, as well as the criteria the servicer should apply for each option. The policies and procedures should be reasonably designed to address how the servicer will apply any specific thresholds for eligibility for particular loss mitigation options established by an owner or assignee of a mortgage loan (e.g., if the owner requires that a particular option be limited to a certain percentage of loans, then the policies and procedures must be reasonably designed to determine in advance how the servicer will apply that threshold). The policies and procedures

must be reasonably designed to ensure that such information is readily accessible to the servicer's loss mitigation personnel.

C. Provide the loss mitigation personnel assigned to the borrower's mortgage loan with prompt access to all of the documents and information that the borrower submitted in connection with a loss mitigation option.

D. Identify the documents and information a borrower must submit to complete a loss mitigation application, and facilitate compliance with the notice required pursuant to 12 CFR 1024.41(b)(2)(i)(B).

E. In response to a complete loss mitigation application, properly evaluate the borrower for all eligible loss mitigation options pursuant to any requirements established by the owner or assignee of the mortgage loan, even if those requirements are otherwise beyond the requirements of 12 CFR 1024.41. For example, an owner or assignee may require that the servicer review a loss mitigation application submitted less than 37 days before a foreclosure sale or re-evaluate a borrower who has demonstrated a material change in financial circumstances.

III. ***Facilitating oversight of, and compliance by, service providers.*** The servicer's policies and procedures must be reasonably designed to ensure that the servicer can:

A. Provide appropriate personnel with access to accurate and current documents and information concerning service providers' actions.

B. Facilitate periodic reviews of service providers.

C. Facilitate the sharing of accurate and current information regarding the status of any evaluation of a borrower's loss mitigation application and any foreclosure proceeding among appropriate servicer personnel, including the loss mitigation personnel assigned the borrower's mortgage loan, and appropriate service provider personnel, including service provider personnel responsible for handling foreclosure proceedings.

IV. ***Facilitating transfer of information during servicing transfers.***

A. ***Transferor Servicer.*** The servicer's policies and procedures must be reasonably designed to ensure that when it transfers a mortgage loan to another servicer, it (i) timely and accurately transfers all information and documents in its possession and control related to a transferred mortgage loan to the transferee servicer, and (ii) transfers the information and documents in a form and manner that ensures their accuracy and that allows the transferee to comply with the terms of the mortgage loan and applicable law. For example, where data is transferred electronically, a transferor servicer must have policies and procedures reasonably designed to ensure that data can be properly and promptly boarded by a transferee servicer's electronic systems. The information that must be transferred includes information reflecting the current status of discussions with the borrower concerning loss mitigation options, any loss mitigation agreements entered into with the borrower, and analysis the servicer performed with respect to potential recovery from a non-performing mortgage loan.

B. ***Transferee Servicer.*** The servicer's policies and procedures must be reasonably designed to ensure that when it receives a mortgage loan from another servicer, it can (i) identify

necessary documents or information that may not have been transferred, and (ii) obtain such documentation or information from the transferor servicer. The servicer's policies and procedures must also be reasonably designed to address obtaining missing information regarding loss mitigation from the transferor servicer before attempting to obtain it from the borrower. For example, if a servicer receives information indicating that a borrower has made payments consistent with a trial or permanent loan modification but the servicer has not received information about the actual modification, the servicer must have policies and procedures reasonably designed to identify whether any such modification agreement exists and to obtain any such agreement from the transferor servicer.

V. ***Informing borrowers of the written error resolution and information request procedures.***

A. The servicer must have policies and procedures reasonably designed to inform borrowers of the procedures for submitting written error notices under 12 CFR 1024.35 and written information requests under 12 CFR 1024.36. A servicer may comply with these requirements by informing borrowers of these procedures by notice (mailed or delivered electronically) or a website. For example, a servicer may comply with this provision by including a statement in the 12 CFR 1026.41 periodic statement advising borrowers that they have certain rights under Federal law related to resolving errors and requesting information, that they may learn more about their rights by contacting the servicer, and directing borrowers to a website.

B. A servicer's policies and procedures also must be reasonably designed to ensure that the servicer provides borrowers who are dissatisfied with the servicer's response to oral complaints or information requests with information about submitting a written error notice or written information request.

C. The commentary addresses the circumstance in which a borrower incorrectly submits an error notice to any address given to the borrower in connection with the submission of a loss mitigation application or continuity of contact. A servicer's policies and procedures must be reasonably designed to ensure that the servicer informs a borrower of the correct procedures for submitting written error notices under such circumstances, including the correct address. Alternatively, the servicer could redirect the error notice to the correct address.

Standard Requirements – 12 CFR 1024.38(c)

Servicers must also retain certain records and maintain particular documents in a manner that facilitates compiling such documents and data into a servicing file.

Record Retention – 12 CFR 1024.38(c)(1)

Servicers must retain records that document any actions the servicer took with respect to a borrower's mortgage loan account until one year after the loan is discharged or the servicer transfers servicing for the mortgage loan. Servicers may use any retention method that reproduces records accurately (such as computer programs) and that ensures that a servicer can access the records easily (such as a contractual right to access records another entity holds).

Servicing File – 12 CFR 1024.38(c)(2)

Servicers must maintain the following documents and data in a manner that facilitates compiling such documents and data into a servicing file within five days: a schedule of all credits and debits to the account (including escrow accounts and suspense accounts), a copy of the security instrument establishing the lien securing the mortgage, any notes created by servicer personnel concerning communications with the borrower, a report of the data fields created by the servicer's electronic systems relating to the borrower's account (if applicable), and copies of any information or documents provided by the borrower in connection with error notices or loss mitigation.
For purposes of this section, a report of data fields relating to a borrower's account means a report listing the relevant data fields by name, populated with any specific data relating to the borrower's account. Examples of such data fields include fields used to identify the terms of the borrower's mortgage loan, the occurrence of automated or manual collection calls, the evaluation of borrower for a loss mitigation option, the owner or assignee of a mortgage loan, and any credit reporting history.

These requirements apply only to information created on or after January 10, 2014.

The CFPB is using its authority to require servicers to establish and to implement reasonable policies and procedures to manage information and documents, to evaluate and respond to loss mitigation applications, and to achieve other important objectives.

In the 2012 RESPA Servicing Proposal, the CFPB stated that it believed that many servicers simply had not made the investments in resources and infrastructure necessary to service large numbers of delinquent loans. The CFPB noted that major servicers demonstrated systemic failures to document and verify, in accordance with applicable law, information relating to borrower mortgage loan accounts in connection with foreclosure proceedings. Examinations by prudential regulators found "critical deficiencies in foreclosure governance processes, document preparation processes, and oversight and monitoring of third parties . . . [a]ll servicers [examined] exhibited similar deficiencies, although the number, nature, and severity of deficiencies varied by servicer."

A servicer's obligation to maintain accurate and timely information regarding a mortgage loan account and to be able to provide accurate and timely information to its own employees and to borrowers, owners, assignees, subsequent servicers, and courts, among others, is one of the most basic servicer duties. A servicer cannot comply with its myriad obligations to investors and applicable law, unless it maintains sound systems to manage the servicing of mortgage loan accounts, including information systems that maintain accurate and timely information with respect to mortgage loan accounts. To address those critical concerns, the CFPB has decided to use its authority to create a rule to address servicers' information management and other general servicing policies and procedures across the industry.

The CFPB believes that servicers should achieve certain critical general servicing objectives and requirements. Through enforcement and supervision, the CFPB will evaluate whether servicers are achieving the objectives and requirements set forth in the regulation. The CFPB also expects that servicers will measure their own ability to achieve the objectives and requirements as set forth. The CFPB expects that servicers' policies and procedures will address the core functions that they need to achieve those objectives and requirements, including providing adequate staffing and meaningful oversight of the resources engaged in achieving those important objectives and requirements, including servicer staff, service providers, and vendors.

Regulatory Text – General Servicing Policies, Procedures, and Requirements [12 CFR § 1024.38]

(a) ***Reasonable policies and procedures.*** *A servicer shall maintain policies and procedures that are reasonably designed to achieve the objectives set forth in paragraph (b) of this section.*

(b) ***Objectives***

(1) ***Accessing and providing timely and accurate information.*** *The policies and procedures required by paragraph (a) of this section shall be reasonably designed to ensure that the servicer can:*

(i) Provide accurate and timely disclosures to a borrower as required by this subpart or other applicable law;

(ii) Investigate, respond to, and, as appropriate, make corrections in response to complaints asserted by a borrower;

(iii) Provide a borrower with accurate and timely information and documents in response to the borrower's requests for information with respect to the borrower's mortgage loan;

(iv) Provide owners or assignees of mortgage loans with accurate and current information and documents about all mortgage loans they own;

(v) Submit documents or filings required for a foreclosure process, including documents or filings required by a court of competent jurisdiction, that reflect accurate and current information and that comply with applicable law; and

(vi) Upon notification of the death of a borrower, promptly identify and facilitate communication with the successor in interest of the deceased borrower with respect to the property secured by the deceased borrower's mortgage loan.

(2) ***Properly evaluating loss mitigation applications.*** *The policies and procedures required by paragraph (a) of this section shall be reasonably designed to ensure that the servicer can:*

(i) Provide accurate information regarding loss mitigation options available to a borrower from the owner or assignee of the borrower's mortgage loan;

(ii) Identify with specificity all loss mitigation options for which borrowers may be eligible pursuant to any requirements established by an owner or assignee of the borrower's mortgage loan;

(iii) Provide prompt access to all documents and information submitted by a borrower in connection with a loss mitigation option to servicer personnel that are assigned to assist the borrower pursuant to §1024.40;

(iv) Identify documents and information that a borrower is required to submit to complete a loss mitigation application and facilitate compliance with the notice required pursuant to §1024.41(b)(2)(i)(B); and

(v) Properly evaluate a borrower who submits an application for a loss mitigation option for all loss mitigation options for which the borrower may be eligible pursuant to any requirements established by the owner or assignee of the borrower's mortgage loan and, where applicable, in accordance with the requirements of §1024.41.

(3) ***Facilitating oversight of, and compliance by, service providers.*** *The policies and procedures required by paragraph (a) of this section shall be reasonably designed to ensure that the servicer can:*

(i) Provide appropriate servicer personnel with access to accurate and current documents and information reflecting actions performed by service providers;

(ii) Facilitate periodic reviews of service providers, including by providing appropriate servicer personnel with documents and information necessary to audit compliance by service providers with the servicer's contractual obligations and applicable law; and

(iii) Facilitate the sharing of accurate and current information regarding the status of any evaluation of a borrower's loss mitigation application and the status of any foreclosure proceeding among appropriate servicer personnel, including any personnel assigned to a borrower's mortgage loan account as described in §1024.40, and appropriate service provider personnel, including service provider personnel responsible for handling foreclosure proceedings.

(4) ***Facilitating transfer of information during servicing transfers****. The policies and procedures required by paragraph (a) of this section shall be reasonably designed to ensure that the servicer can:*

(i) As a transferor servicer, timely transfer all information and documents in the possession or control of the servicer relating to a transferred mortgage loan to a transferee servicer in a form and manner that ensures the accuracy of the information and documents transferred and that enables a transferee servicer to comply with the terms of the transferee servicer's obligations to the owner or assignee of the mortgage loan and applicable law; and

(ii) As a transferee servicer, identify necessary documents or information that may not have been transferred by a transferor servicer and obtain such documents from the transferor servicer.

(iii) For the purposes of this paragraph (b)(4), transferee servicer means a servicer, including a master servicer or a subservicer, that performs or will perform servicing of a mortgage loan and transferor servicer means a servicer, including a master servicer or a subservicer, that transfers or will transfer the servicing of a mortgage loan.

(5) ***Informing borrowers of the written error resolution and information request procedures.*** *The policies and procedures required by paragraph (a) of this section shall be reasonably designed to ensure that the servicer informs borrowers of the procedures for submitting written notices of error set forth in §1024.35 and written information requests set forth in §1024.36.*

(c) ***Standard requirements***

(1) ***Record retention.*** *A servicer shall retain records that document actions taken with respect to a borrower's mortgage loan account until one year after the date a mortgage loan is discharged or servicing of a mortgage loan is transferred by the servicer to a transferee servicer.*

(2) ***Servicing file.*** *A servicer shall maintain the following documents and data on each mortgage loan account serviced by the servicer in a manner that facilitates compiling such documents and data into a servicing file within five days:*

(i) A schedule of all transactions credited or debited to the mortgage loan account, including any escrow account as defined in §1024.17(b) and any suspense account;

(ii) A copy of the security instrument that establishes the lien securing the mortgage loan;

(iii) Any notes created by servicer personnel reflecting communications with the borrower about the mortgage loan account;

(iv) To the extent applicable, a report of the data fields relating to the borrower's mortgage loan account created by the servicer's electronic systems in connection with servicing practices; and

(v) Copies of any information or documents provided by the borrower to the servicer in accordance with the procedures set forth in §1024.35 or §1024.41.

Regulatory Commentary – General Servicing Policies, Procedures, and Requirements [12 CFR § 1024.38]

1. ***Policies and procedures.*** *A servicer may determine the specific policies and procedures it will adopt and the methods by which it will implement those policies and procedures so long as they are reasonably designed to achieve the objectives set forth in §1024.38(b). A servicer has flexibility to determine such policies and procedures and methods in light of the size, nature, and scope of the servicer's operations, including, for example, the volume and aggregate unpaid principal balance of mortgage loans serviced, the credit quality, including the default risk, of the mortgage loans serviced, and the servicer's history of consumer complaints.*

2. ***Procedures used.*** *The term "procedures" refers to the actual practices followed by a servicer for achieving the objectives set forth in §1024.38(b).*

Paragraph 38(b)(1)(ii).

1. ***Errors committed by service providers.*** *A servicer's policies and procedures must be reasonably designed to provide for promptly obtaining information from service providers to facilitate achieving the objective of correcting errors resulting from actions of service providers, including obligations arising pursuant to §1024.35.*

Paragraph 38(b)(1)(iv).

1. ***Accurate and current information for owners or assignees of mortgage loans relating to loan modifications.*** *The relevant current information to owners or assignees of mortgage loans includes, among other things, information about a servicer's evaluation of borrowers for loss mitigation options and a servicer's agreements with borrowers on loss mitigation options, including loan modifications. Such information includes, for example, information regarding the date, terms,*

and features of loan modifications, the components of any capitalized arrears, the amount of any servicer advances, and any assumptions regarding the value of a property used in evaluating any loss mitigation options.

Paragraph 38(b)(2)(ii).

1. ***Means of identifying all available loss mitigation options.*** *Servicers must develop policies and procedures that are reasonably designed to enable servicer personnel to identify all loss mitigation options available for mortgage loans currently serviced by the mortgage servicer. For example, a servicer's policies and procedures must be reasonably designed to address how a servicer specifically identifies, with respect to each owner or assignee, all of the loss mitigation options that the servicer may consider when evaluating any borrower for a loss mitigation option and the criteria that should be applied by a servicer when evaluating a borrower for such options. In addition, a servicer's policies and procedures must be reasonably designed to address how the servicer will apply any specific thresholds for eligibility for a particular loss mitigation option established by an owner or assignee of a mortgage loan (e.g., if the owner or assignee requires that a servicer only make a particular loss mitigation option available to a certain percentage of the loans that the servicer services for that owner or assignee, then the servicer's policies and procedures must be reasonably designed to determine in advance how the servicer will apply that threshold to those mortgage loans). A servicer's policies and procedures must also be reasonably designed to ensure that such information is readily accessible to the servicer personnel involved with loss mitigation, including personnel made available to the borrower as described in §1024.40.*

Paragraph 38(b)(2)(v).

1. ***Owner or assignee requirements.*** *A servicer must have policies and procedures reasonably designed to evaluate a borrower for a loss mitigation option consistent with any owner or assignee requirements, even where the requirements of §1024.41 may be inapplicable. For example, an owner or assignee may require that a servicer implement certain procedures to review a loss mitigation application submitted by a borrower less than 37 days before a foreclosure sale. Further, an owner or assignee may require that a servicer implement certain procedures to re-evaluate a borrower who has demonstrated a material change in the borrower's financial circumstances for a loss mitigation option after the servicer's initial evaluation. A servicer must have policies and procedures reasonably designed to implement these requirements even if such loss mitigation evaluations may not be required pursuant to §1024.41.*

Paragraph 38(b)(4)(i).

1. ***Electronic document transfers.*** *A transferor servicer's policies and procedures may provide for transferring documents and information electronically, provided that the transfer is conducted in a manner that is reasonably designed to ensure the accuracy of the information and documents transferred and that enables a transferee servicer to comply with its obligations to the owner or assignee of the loan and with applicable law. For example, a transferor servicer must have policies and procedures reasonably designed to ensure that data can be properly and promptly boarded by a transferee servicer's electronic systems and that all necessary documents and information are available to, and can be appropriately identified by, a transferee servicer.*

2. ***Loss mitigation documents.*** *A transferor servicer's policies and procedures must be reasonably designed to ensure that the transfer includes any information reflecting the current status of discussions with a borrower regarding loss mitigation options, any agreements entered into with a borrower on a loss mitigation option, and any analysis by a servicer with respect to potential recovery from a non-performing mortgage loan, as appropriate.*

Paragraph 38(b)(4)(ii).

1. ***Missing loss mitigation documents and information.*** *A transferee servicer must have policies and procedures reasonably designed to ensure, in connection with a servicing transfer, that the transferee servicer receives information regarding any loss mitigation discussions with a borrower, including any copies of loss mitigation agreements. Further, the transferee servicer's policies and procedures must address obtaining any such missing information or documents from a transferor servicer before attempting to obtain such information from a borrower. For example, assume a servicer receives documents or information from a transferor servicer indicating that a borrower has made payments consistent with a trial or permanent loan modification but has not received information about the existence of a trial or permanent loan modification agreement. The servicer must have policies and procedures reasonably designed to identify whether any such loan modification agreement exists with the transferor servicer and to obtain any such agreement from the transferor servicer.*

38(b)(5) Informing borrowers of written error resolution and information request procedures.

1. ***Manner of informing borrowers****. A servicer may comply with the requirement to maintain policies and procedures reasonably designed to inform borrowers of the procedures for submitting written notices of error set forth in §1024.35 and written information requests set forth in §1024.36 by informing borrowers, through a notice (mailed or delivered electronically) or a Web site. For example, a servicer may comply with §1024.38(b)(5) by including in the periodic statement required pursuant to §1026.41 a brief statement informing borrowers that borrowers have certain rights under Federal law related to resolving errors and requesting information about their account, and that they may learn more about their rights by contacting the servicer, and a statement directing borrowers to a Web site that provides a description of the procedures set forth in §§1024.35 and 1024.36. Alternatively, a servicer may also comply with §1024.38(b)(5) by including a description of the procedures set forth in §§1024.35 and 1024.36 in the written notice required by §1024.35(c) and §1024.36(b).*

2. ***Oral complaints and requests.*** *A servicer's policies and procedures must be reasonably designed to provide information to borrowers who are not satisfied with the resolution of a complaint or request for information submitted orally about the procedures for submitting written notices of error set forth in §1024.35 and for submitting written requests for information set forth in §1024.36.*

3. ***Notices of error incorrectly sent to addresses associated with submission of loss mitigation applications or the continuity of contact.*** *A servicer's policies and procedures must be reasonably designed to ensure that if a borrower incorrectly submits an assertion of an error to any address given to the borrower in connection with submission of a loss mitigation application or the continuity of contact pursuant to §1024.40, the servicer will inform the borrower of the procedures for submitting written notices of error set forth in §1024.35, including the correct address. Alternatively, the servicer could redirect such notices to the correct address.*

38(c)(1)Record retention.

1. ***Methods of retaining records.*** *Retaining records that document actions taken with respect to a borrower's mortgage loan account does not necessarily mean actual paper copies of documents. The records may be retained by any method that reproduces the records accurately (including computer programs) and that ensures that the servicer can easily access the records (including a contractual right to access records possessed by another entity).*

38(c)(2) Servicing file.

1. ***Timing.*** *A servicer complies with §1024.38(c)(2) if it maintains information in a manner that facilitates compliance with §1024.38(c)(2) beginning on or after January 10, 2014. A servicer is not required to comply with §1024.38(c)(2) with respect to information created prior to January 10, 2014. For example, if a mortgage loan was originated on January 1, 2013, a servicer is not required by §1024.38(c)(2) to maintain information regarding transactions credited or debited to that mortgage loan account in any particular manner for payments made prior to January 10, 2014. However, for payments made on or after January 10, 2014, a servicer must maintain such information in a manner that facilitates compiling such information into a servicing file within five days.*

2. ***Borrower requests for servicing file.*** *Section 1024.38(c)(2) does not confer upon any borrower an independent right to access information contained in the servicing file. Upon receipt of a borrower's request for a servicing file, a servicer shall provide the borrower with a copy of the information contained in the servicing file for the borrower's mortgage loan, subject to the procedures and limitations set forth in §1024.36.*

Paragraph 38(c)(2)(iv).

1. ***Report of data fields.*** *A report of the data fields relating to a borrower's mortgage loan account created by the servicer's electronic systems in connection with servicing practices means a report listing the relevant data fields by name, populated with any specific data relating to the borrower's mortgage loan account. Examples of data fields relating to a borrower's mortgage loan account created by the servicer's electronic systems in connection with servicing practices include fields used to identify the terms of the borrower's mortgage loan, fields used to identify the occurrence of automated or manual collection calls, fields reflecting the evaluation of a borrower for a loss mitigation option, fields used to identify the owner or assignee of a mortgage loan, and any credit reporting history.*

Section 26: 12 CFR § 1024.39
Early Intervention Requirements for Certain Borrowers

Introduction - Two Notices

The regulation requires servicers to notify or make good faith efforts to notify a borrower orally that the borrower's payment is late and that loss mitigation options may be available, if applicable. Servicers are required to take this action not later than 36 days after the payment due date, unless the borrower satisfied the payment during that period.

The regulation also requires servicers to provide a written notice with information about the foreclosure process, housing counselors and the borrower's State housing finance authority, and, if applicable, information about loss mitigation options that may be available to the borrower. Servicers are required to provide the written notice not later than 45 days after the payment due date, unless the borrower satisfied the payment during that period.

These two notices were designed primarily to encourage delinquent borrowers to work with their servicer to identify their options for avoiding foreclosure. Once again, we have chosen to include the synopsis of this portion of the regulation as it appears in the FDIC Examination Manual for RESPA.

FDIC Synopsis - Early Intervention Requirements for Certain Borrowers – 12 CFR 1024.39

Servicers must engage in certain efforts to contact delinquent borrowers. These requirements apply to only those mortgage loans, as that term is defined in 12 CFR 1024.31, that are secured by the borrower's principal residence. The requirements do not apply to (i) small servicers, (ii) reverse mortgage transactions, as that term is defined in 12 CFR 1024.31, or (iii) mortgage loans for which the servicer is a qualified lender.

As noted above, an institution qualifies as a small servicer if it either (a) services, together with any affiliates, 5,000 or fewer mortgage loans, as that term is used in 12 CFR 1026.41(a)(1), for all of which the institution (or an affiliate) is the creditor or assignee, (b) is a Housing Finance Agency, as defined in 24 CFR 266.5, or (c) is a nonprofit entity (defined in 12 CFR 1026.41(e)(4)(ii)(C)(*1*)) that services 5,000 or fewer mortgage loans, including any mortgage loans serviced on behalf of associated nonprofit entities (defined in 12 CFR 1026.41(e)(4)(ii)(C)(*2*)), for all of which the servicer or an associated nonprofit entity is the creditor.21 Qualified lenders are those defined to be qualified lenders under the Farm Credit Act of 1971 and the Farm Credit Administration's accompanying regulations set forth at 12 CFR 617.7000 *et seq*. For purposes of this section, a borrower who is performing under a loss mitigation agreement is not considered delinquent and is not covered by this section.

Live Contact – 12 CFR 1024.39(a)

Servicers must make good faith efforts to establish live contact with a borrower no later than the 36th day of delinquency. Promptly after establishing live contact, the servicer must inform the borrower of any loss mitigation options, if appropriate. The commentary states that "[d]elinquency begins on the day a payment sufficient to cover principal, interest, and, if applicable, escrow for a given billing cycle is due and unpaid." Borrowers are not delinquent if they are performing according to the terms of a loss mitigation plan, but they become delinquent if and when they fail to make a payment required under such a plan.

The commentary also states that good faith efforts to establish live contact consist of "reasonable steps under the circumstances," and these efforts "may include telephoning the borrower on more than one occasion or sending written or electronic communication encouraging the borrower to establish live contact with the servicer."

It is within the servicer's reasonable discretion to determine whether it is appropriate under the circumstances to inform a borrower of any loss mitigation options. Examples of a servicer making a reasonable determination include a servicer informing a borrower about loss mitigation options after the borrower notifies the servicer during live contact of a material adverse change in financial circumstances that is likely to cause a long-term delinquency for which loss mitigation options may be available, or a servicer not providing information about loss mitigation options to a borrower who has missed a January 1 payment and notified the servicer that the full late payment will be transmitted to the servicer by February 15.

Written Notice – 12 CFR 1024.39(b)

Servicers must send a borrower a written notice within 45 days after the borrower becomes delinquent. The written notice must encourage the borrower to contact the servicer, provide the servicer's telephone number and address to access assigned loss mitigation personnel, describe examples of loss mitigation options that may be available (if applicable), provide loss mitigation application instructions or advise how to obtain more information about loss mitigation options such as contacting the servicer (if applicable), and list either the CFPB's or HUD's website to access a list of homeownership counselors or counseling organization and HUD's toll-free number to access homeownership counselors or counseling organizations.

A servicer is not required to provide the written notice under this section to a borrower more than once in any 180-day period. Accordingly, using the above example, a servicer who provided the written notice to the borrower within 45 days after the borrower became delinquent on January 1 would not be required to send another written notice if the borrower failed to make the February 1 payment.

Conflicts with Other Law – 12 CFR 1024.39(c)

Servicers are not required to comply with the live contact and written notice requirements if doing so would violate applicable law. Thus, for example, a servicer does not need to communicate with borrowers in a way that would be inconsistent with bankruptcy law.

Exemptions – 12 CFR 1024.39(d)

Section 1024.39(d) exempts servicers from the early intervention requirements in two situations.

1. ***Borrowers in bankruptcy.*** A servicer is exempt from the early intervention requirements for a mortgage loan while the borrower is a debtor under the Bankruptcy Code (11 U.S.C. 101 *et seq*.).

a. ***Obligation to resume post-bankruptcy.*** With respect to any portion of the mortgage debt that is not discharged through bankruptcy, a servicer must resume compliance with the early intervention requirement after the first delinquency that follows the earliest of the following: (i) the borrower's bankruptcy case is dismissed; (ii) the borrower's bankruptcy case is closed; or (iii) the borrower receives a general discharge of debts under the Bankruptcy Code. However, a servicer is not required to communicate with a borrower in any way that would violate applicable bankruptcy law or a court order in a bankruptcy case, and a servicer may adapt the early intervention requirement in any manner believed necessary. A servicer also is not required to comply with the early intervention requirement for any portion of the mortgage debt that was discharged under the Bankruptcy Code or if a bankruptcy case is revived.

b. ***Joint obligors.*** The bankruptcy exception applies if two or more borrowers are joint obligors with primary liability on a mortgage loan and any one of the borrowers is in bankruptcy. For example, if a husband and wife jointly own a home and the husband files for bankruptcy, the servicer is exempt from the early intervention requirements as to both the husband and wife.

2. ***FDCPA "cease communication" request.*** A servicer subject to the FDCPA with respect to the borrower is exempt from the early intervention requirements with respect to a mortgage loan for which the borrower has sent a "cease communication" notification pursuant to FDCPA section 805(c) (15 U.S.C. 1692c(c)).

Regulatory Text – Early Intervention Requirements for Certain Borrowers - [12 CFR § 1024.39]

(a) ***Live contact****. A servicer shall establish or make good faith efforts to establish live contact with a delinquent borrower not later than the 36th day of the borrower's delinquency and, promptly after establishing live contact, inform such borrower about the availability of loss mitigation options if appropriate.*

(b) ***Written notice***

(1) ***Notice required.*** *Except as otherwise provided in this section, a servicer shall provide to a delinquent borrower a written notice with the information set forth in paragraph (b)(2) of this section not later than the 45th day of the borrower's delinquency. A servicer is not required to provide the written notice more than once during any 180-day period.*

(2) ***Content of the written notice.*** *The notice required by paragraph (b)(1) of this section shall include:*

(i) A statement encouraging the borrower to contact the servicer;

(ii) The telephone number to access servicer personnel assigned pursuant to §1024.40(a) and the servicer's mailing address;

(iii) If applicable, a statement providing a brief description of examples of loss mitigation options that may be available from the servicer;

(iv) If applicable, either application instructions or a statement informing the borrower how to obtain more information about loss mitigation options from the servicer; and

(v) The Web site to access either the Bureau list or the HUD list of homeownership counselors or counseling organizations, and the HUD toll-free telephone number to access homeownership counselors or counseling organizations.

(3) ***Model clauses.*** *Model clauses MS-4(A), MS-4(B), and MS-4(C), in appendix MS-4 to this part may be used to comply with the requirements of this paragraph (b).*

(c) ***Conflicts with other law.*** *Nothing in this section shall require a servicer to communicate with a borrower in a manner otherwise prohibited by applicable law.*

(d) ***Exemptions***

(1) ***Borrowers in bankruptcy.*** *A servicer is exempt from the requirements of this section for a mortgage loan while the borrower is a debtor in bankruptcy under Title 11 of the United States Code.*

(2) ***Fair Debt Collections Practices Act.*** *A servicer subject to the Fair Debt Collections Practices Act (FDCPA) (15 U.S.C. 1692 et seq.) with respect to a borrower is exempt from the requirements of this section with regard to a mortgage loan for which the borrower has sent a notification pursuant to FDCPA section 805(c) (15 U.S.C. 1692c(c)).*

Regulatory Commentary – Early Intervention Requirements for Certain Borrowers [12 CFR § 1024.39]

39(a) Live contact.

1. ***Delinquency.*** *A borrower is delinquent for purposes of §1024.39 as follows:*

i. Delinquency begins on the day a payment sufficient to cover principal, interest, and, if applicable, escrow for a given billing cycle is due and unpaid, even if the borrower is afforded a period after the due date to pay before the servicer assesses a late fee. For example, if a payment due date is January 1 and the amount due is not fully paid during the 36-day period after January 1, the servicer must establish or make good faith efforts to establish live contact not later than 36 days after January 1—i.e., by February 6.

ii. A borrower who is performing as agreed under a loss mitigation option designed to bring the borrower current on a previously missed payment is not delinquent for purposes of §1024.39.

iii. During the 60-day period beginning on the effective date of transfer of the servicing of any mortgage loan, a borrower is not delinquent for purposes of §1024.39 if the transferee servicer learns that the borrower has made a timely payment that has been misdirected to the transferor servicer and the transferee servicer documents its files accordingly. See §1024.33(c)(1) and comment 33(c)(1)-2.

iv. A servicer need not establish live contact with a borrower unless the borrower is delinquent during the 36 days after a payment due date. If the borrower satisfies a payment in full before the end of the 36-day period, the servicer need not establish live contact with the borrower. For example, if a borrower misses a January 1 due date but makes that payment on February 1, a servicer need not establish or make good faith efforts to establish live contact by February 6.

2. ***Establishing live contact.*** *Live contact provides servicers an opportunity to discuss the circumstances of a borrower's delinquency. Live contact with a borrower includes telephoning or conducting an in-person meeting with the borrower, but not leaving a recorded phone message. A servicer may, but need not, rely on live contact established at the borrower's initiative to satisfy the live contact requirement in §1024.39(a). Good faith efforts to establish live contact consist of reasonable steps under the circumstances to reach a borrower and may include telephoning the borrower on more than one occasion or sending written or electronic communication encouraging the borrower to establish live contact with the servicer.*

3. ***Promptly inform if appropriate.***

i. ***Servicer's determination****. It is within a servicer's reasonable discretion to determine whether informing a borrower about the availability of loss mitigation options is appropriate under the circumstances. The following examples demonstrate when a servicer has made a reasonable determination regarding the appropriateness of providing information about loss mitigation options.*

A. A servicer provides information about the availability of loss mitigation options to a borrower who notifies a servicer during live contact of a material adverse change in the borrower's financial circumstances that is likely to cause the borrower to experience a long-term delinquency for which loss mitigation options may be available.

B. A servicer does not provide information about the availability of loss mitigation options to a borrower who has missed a January 1 payment and notified the servicer that full late payment will be transmitted to the servicer by February 15.

ii. ***Promptly inform.*** *If appropriate, a servicer may inform borrowers about the availability of loss mitigation options orally, in writing, or through electronic communication, but the servicer must provide such information promptly after the servicer establishes live contact. A servicer need not notify a borrower about any particular loss mitigation options at this time; if appropriate, a servicer need only inform borrowers generally that loss mitigation options may be available. If appropriate, a servicer may satisfy the requirement in §1024.39(a) to inform a borrower about loss mitigation options by providing the written notice required by §1024.39(b)(1), but the servicer must provide such notice promptly after the servicer establishes live contact.*

4. ***Borrower's representative.*** *Section 1024.39 does not prohibit a servicer from satisfying the requirements §1024.39 by establishing live contact with and, if applicable, providing information about loss mitigation options to a person authorized by the borrower to communicate with the servicer on the borrower's behalf. A servicer may undertake reasonable procedures to determine if a person that claims to be an agent of a borrower has authority from the borrower to act on the borrower's behalf, for example, by requiring a person that claims to be an agent of the borrower provide documentation from the borrower stating that the purported agent is acting on the borrower's behalf.*

39(b)(1) Notice required.

1. ***Delinquency.*** *For guidance on the circumstances under which a borrower is delinquent for purposes of §1024.39, see comment 39(a)-1. For example, if a payment due date is January 1 and the payment remains unpaid during the 45-day period after January 1, the servicer must provide the written notice within 45 days after January 1—i.e., by February 15. However, if a borrower satisfies a late payment in full before the end of the 45-day period, the servicer need not provide the written notice. For example, if a borrower misses a January 1 due date but makes that payment on February 1, a servicer need not provide the written notice by February 15.*

2. ***Frequency of the written notice.*** *A servicer need not provide the written notice under §1024.39(a) more than once during a 180-day period beginning on the date on which the written notice is provided. For example, a borrower has a payment due on March 1. The amount due is not fully paid during the 45 days after March 1 and the servicer provides the written notice within 45 days after March 1—i.e., by April 15. If the borrower subsequently fails to make a payment due April 1 and the amount due is not fully paid during the 45 days after April 1, the servicer need not provide the written notice again during the 180-day period beginning on April 15.*

3. ***Borrower's representative.*** *See comment 39(a)-4.*

4. ***Relationship to §1024.39(a).*** *The written notice required under §1024.39(b)(1) must be provided even if the servicer provided information about loss mitigation and foreclosure previously during an oral communication with the borrower under §1024.39(a).*

39(b)(2) Content of the written notice.

1. ***Minimum requirements.*** *Section 1024.39(b)(2) contains minimum content requirements for the written notice. A servicer may provide additional information that the servicer determines would be helpful or which may be required by applicable law or the owner or assignee of the mortgage loan.*

2. ***Format.*** *Any color, number of pages, size and quality of paper, size and type of print, and method of reproduction may be used, provided each of the statements required by §1024.39(b)(2) satisfies the clear and conspicuous standard in §1024.32(a)(1).*

3. ***Delivery.*** *A servicer may satisfy the requirement to provide the written notice by combining other notices that satisfy the content requirements of §1024.39(b)(2) into a single mailing, provided each of the statements required by §1024.39(b)(2) satisfies the clear and conspicuous standard in §1024.32(a)(1).*

Paragraph 39(b)(2)(iii).

1. ***Number of examples.*** *Section 1024.39(b)(2)(iii) does not require that a specific number of examples be disclosed, but borrowers are likely to benefit from examples of options that would permit them to retain ownership of their home and examples of options that may require borrowers to end their ownership to avoid foreclosure. The servicer may include a generic list of loss mitigation options that it offers to borrowers. The servicer may include a statement that not all borrowers will qualify for the listed options.*

*2. **Brief description.** An example of a loss mitigation option may be described in one or more sentences. If a servicer offers a loss mitigation option comprising several loss mitigation programs, the servicer may provide a generic description of the option without providing detailed descriptions of each program. For example, if the servicer offers several loan modification programs, the servicer may provide a generic description of "loan modification."*

Paragraph 39(b)(2)(iv).

*1. **Explanation of how the borrower may obtain more information about loss mitigation options.** A servicer may comply with §1024.39(b)(2)(iv) by directing the borrower to contact the servicer for more detailed information on how to apply for loss mitigation options. For example, a general statement such as, "contact us for instructions on how to apply" would satisfy the requirement to inform the borrower how to obtain more information about loss mitigation options. However, to expedite the borrower's timely application for any loss mitigation options, servicers may provide more detailed instructions, such as by listing representative documents the borrower should make available to the servicer (such as tax filings or income statements), and an estimate of how quickly the servicer expects to evaluate a completed application and make a decision on loss mitigation options. Servicers may also supplement the written notice required by §1024.39(b)(1) with a loss mitigation application form.*

39(d)(1) Borrowers in bankruptcy.

*1. **Commencing a case.** The requirements of §1024.39 do not apply once a petition is filed under Title 11 of the United States Code, commencing a case in which the borrower is a debtor.*

*2. **Obligation to resume early intervention requirements**.*

> *i. With respect to any portion of the mortgage debt that is not discharged, a servicer must resume compliance with §1024.39 after the first delinquency that follows the earliest of any of three potential outcomes in the borrower's bankruptcy case: the case is dismissed, the case is closed, or the borrower receives a discharge under 11 U.S.C. 727, 1141, 1228, or 1328. However, this requirement to resume compliance with §1024.39 does not require a servicer to communicate with a borrower in a manner that would be inconsistent with applicable bankruptcy law or a court order in a bankruptcy case. To the extent permitted by such law or court order, a servicer may adapt the requirements of §1024.39 in any manner believed necessary.*
>
> *ii. Compliance with §1024.39 is not required for any portion of the mortgage debt that is discharged under applicable provisions of the U.S. Bankruptcy Code. If the borrower's bankruptcy case is revived—for example if the court reinstates a previously dismissed case, reopens the case, or revokes a discharge—the servicer is again exempt from the requirement in §1024.39.*

*3. **Joint obligors.** When two or more borrowers are joint obligors with primary liability on a mortgage loan subject to §1024.39, the exemption in §1024.39(d)(1) applies if any of the borrowers is in bankruptcy. For example, if a husband and wife jointly own a home, and the husband files for bankruptcy, the servicer is exempt from complying with §1024.39 as to both the husband and the wife.*

Section 27: 12 CFR § 1024.40
Continuity of Contact

Introduction

The regulation addresses servicers' obligation to provide delinquent borrowers with access to servicer personnel to respond to inquiries, and assist them with foreclosure avoidance options. The CFPB proposed this section to establish requirements to ensure that there would be a baseline level of standards that would address the issue.

We are including the FDIC Examination Manual's discussion of this topic.

FDIC Examination Manual Synopsis - Continuity of Contact – 12 CFR 1024.40

Servicers must maintain policies and procedures to facilitate continuity of contact between the borrower and the servicer.

These requirements apply to only those mortgage loans, as that term is defined in 12 CFR 1024.31, that are secured by the borrower's principal residence. The requirements do not apply to (i) small servicers, (ii) reverse mortgage transactions, as that term is defined in 12 CFR 1024.31, or (iii) mortgage loans for which the servicer is a qualified lender.

As noted above, an institution qualifies as a small servicer if it either (a) services, together with any affiliates, 5,000 or fewer mortgage loans, for all of which the institution (or an affiliate) is the creditor or assignee, (b) is a Housing Finance Agency, as defined in 24 CFR 266.5, or (c) is a nonprofit entity (defined in 12 CFR 1026.41(e)(4)(ii)(C)(*1*)) that services 5,000 or fewer mortgage loans, including any mortgage loans serviced on behalf of associated nonprofit entities (defined in 12 CFR 1026.41(e)(4)(ii)(C)(*2*)), for all of which the servicer or an associated nonprofit entity is the creditor.

Qualified lenders are those defined to be qualified lenders under the Farm Credit Act of 1971 and the Farm Credit Administration's accompanying regulations set forth at 12 CFR 617.7000 *et seq*.

General Continuity of Contact Policies and Procedures – 12 CFR 1024.40(a)

Servicers must have policies and procedures that are reasonably designed to assign personnel (one or more persons) to a delinquent borrower at the time the servicer provides the borrower with the written notice required under 12 CFR 1024.39(b), and in any event, not later than the 45th day of the borrower's delinquency. The assigned personnel should be available by telephone to answer the borrower's questions and assist the borrower with available loss mitigation options until the borrower makes two consecutive timely payments under a permanent loss mitigation agreement. If the borrower contacts the assigned personnel and does not receive an immediate live response, the servicer must have policies and procedures reasonably designed to ensure the servicer can provide a live response in a timely manner.

Functions of Servicer Personnel – 12 CFR 1024.40(b)

The servicer must also maintain policies and procedures reasonably designed to ensure that the assigned personnel can perform certain functions, including: providing the borrower with accurate information about (1) loss mitigation options available to the borrower from the owner or assignee of the borrower's loan, (2) actions the borrower must take to be evaluated for such options, including the steps the borrower needs to take to submit a complete loss mitigation application and appeal a denial of a loan modification option (if applicable), (3) the status of any loss mitigation application the borrower has submitted, (4) the circumstances under which the servicer may refer the borrower's account to foreclosure, and (5) any loss mitigation deadlines.

The servicer must also have policies and procedures reasonably designed to ensure that assigned personnel are able to (1) timely retrieve a complete record of the borrower's payment history and all written information the borrower has provided to the servicer (or prior servicers) in connection with a loss mitigation application, (2) provide these documents to other people required to evaluate the borrower for loss mitigation options, if applicable, and (3) provide the borrower with information about submitting an error notice or information request under 12 CFR 1024.35 or 12 CFR 1024.36.

Regulatory Text – Continuity of Contact [12 CFR § 1024.40]

*(a) **In general.** A servicer shall maintain policies and procedures that are reasonably designed to achieve the following objectives:*

(1) Assign personnel to a delinquent borrower by the time the servicer provides the borrower with the written notice required by §1024.39(b), but in any event, not later than the 45th day of the borrower's delinquency.

(2) Make available to a delinquent borrower, via telephone, personnel assigned to the borrower as described in paragraph (a)(1) of this section to respond to the borrower's inquiries, and as applicable, assist the borrower with available loss mitigation options until the borrower has made, without incurring a late charge, two consecutive mortgage payments in accordance with the terms of a permanent loss mitigation agreement.

(3) If a borrower contacts the personnel assigned to the borrower as described in paragraph (a)(1) of this section and does not immediately receive a live response from such personnel, ensure that the servicer can provide a live response in a timely manner.

*(b) **Functions of servicer personnel.** A servicer shall maintain policies and procedures reasonably designed to ensure that servicer personnel assigned to a delinquent borrower as described in paragraph (a) of this section perform the following functions:*

(1) Provide the borrower with accurate information about:

(i) Loss mitigation options available to the borrower from the owner or assignee of the borrower's mortgage loan;

(ii) Actions the borrower must take to be evaluated for such loss mitigation options, including actions the borrower must take to submit a complete loss mitigation application, as defined in §1024.41, and, if applicable, actions the borrower must take to appeal the servicer's determination to deny a borrower's loss mitigation application for any trial or permanent loan modification program offered by the servicer;

(iii) The status of any loss mitigation application that the borrower has submitted to the servicer;

(iv) The circumstances under which the servicer may make a referral to foreclosure; and

(v) Applicable loss mitigation deadlines established by an owner or assignee of the borrower's mortgage loan or §1024.41.

(2) Retrieve, in a timely manner:

(i) A complete record of the borrower's payment history; and

(ii) All written information the borrower has provided to the servicer, and if applicable, to prior servicers, in connection with a loss mitigation application;

(3) Provide the documents and information identified in paragraph (b)(2) of this section to other persons required to evaluate a borrower for loss mitigation options made available by the servicer, if applicable; and

(4) Provide a delinquent borrower with information about the procedures for submitting a notice of error pursuant to §1024.35 or an information request pursuant to §1024.36.

Regulatory Commentary – Continuity of Contact [12 CFR § 1024.40]

40(a) In general.

*1. **Delinquent borrower.** A borrower is not considered delinquent if the borrower has refinanced the mortgage loan, paid off the mortgage loan, brought the mortgage loan current by paying all amounts owed in arrears, or if title to the borrower's property has been transferred to a new owner through, for example, a deed-in-lieu of foreclosure, a sale of the borrower's property, including, as applicable, a short sale, or a foreclosure sale. For purposes of responding to a borrower's inquiries and assisting a borrower with loss mitigation options, the term "borrower" includes a person authorized by the borrower to act on the borrower's behalf. A servicer may undertake reasonable procedures to determine if a person that claims to be an agent of a borrower has authority from the borrower to act on the borrower's behalf, for example by requiring that a person who claims to be an agent of the borrower provide documentation from the borrower stating that the purported agent is acting on the borrower's behalf.*

*2. **Assignment of personnel.** A servicer has discretion to determine whether to assign a single person or a team of personnel to respond to a delinquent borrower. The personnel a servicer assigns to the borrower as described in §1024.40(a)(1) may be single-purpose or multi-purpose personnel. Single-purpose personnel are personnel whose primary responsibility is to respond to a delinquent borrower's inquiries, and as applicable, assist the borrower with available loss mitigation options. Multi-purpose personnel can be personnel that do not have a primary responsibility at all, or personnel for whom responding to a delinquent borrower's inquiries, and as applicable, assisting the borrower with available loss mitigation options is not the personnel's primary responsibility. If the delinquent borrower files for bankruptcy, a servicer may assign personnel with specialized knowledge in bankruptcy law to assist the borrower.*

*3. **Delinquency.** For purposes of §1024.40(a), delinquency begins on the day a payment sufficient to cover principal, interest, and, if applicable, escrow for a given billing cycle is due and unpaid, even if the borrower is afforded a period after the due date to pay before the servicer assesses a late fee. See the example set forth in comment 39(a)-1.i.*

Section 28: 12 CFR § 1024.41
Loss Mitigation Procedures

Introduction

There has been widespread concern regarding pervasive problems with servicers' performance regarding loss mitigation activity. This section of the regulation is the CFPB's attempt to repair those issues. Once again, we rely on the FDIC Examination Manual for an understanding of the requirements.

FDIC Examination Manual Synopsis – Loss Mitigation Procedures [12 CFR 1024.41]

Servicers must comply with certain loss mitigation procedures. The procedures differ depending on how far in advance of foreclosure a borrower submits a loss mitigation application. Regulation X does not impose a duty on a servicer to provide any borrower with any specific loss mitigation option.

The requirements set forth in 12 CFR 1024.41 apply to only those mortgage loans, as that term is defined in 12 CFR 1024.31, that are secured by the borrower's principal residence. Except as noted below in 12 CFR 1024.41(j), the requirements do not apply to (i) small servicers, (ii) reverse mortgage transactions, as that term is defined in 12 CFR 1024.31, or (iii) mortgage loans for which the servicer is a qualified lender.

As noted above, an institution qualifies as a small servicer if it either (a) services, together with any affiliates, 5,000 or fewer mortgage loans, as that term is used in 12 CFR 1026.41(a)(1), for all of which the institution (or an affiliate) is the creditor or assignee, (b) is a Housing Finance Agency, as defined in 24 CFR 266.5 or (c) is a nonprofit entity (defined in 12 CFR 1026.41(e)(4)(ii)(C)(*1*)) that services 5,000 or fewer mortgage loans, including any mortgage loans serviced on behalf of associated nonprofit entities (defined in 12 CFR 1026.41(e)(4)(ii)(C)(*2*)), for all of which the servicer or an associated nonprofit entity is the creditor.23 Qualified lenders are those defined to be qualified lenders under the Farm Credit Act of 1971 and the Farm Credit Administration's accompanying regulations set forth at 12 CFR 617.7000 *et seq*.

The CFPB has issued an advisory opinion clarifying that, because borrowers submit loss mitigation applications to servicers, a servicer's communications with a borrower regarding such a loss mitigation application are not subject to the FDCPA's "cease communication" provision unless the borrower specifically withdraws the request for action on the loss mitigation application.24

Receipt of a Loss Mitigation Application – 12 CFR 1024.41(b)

A servicer that receives a loss mitigation application at least 45 days before a foreclosure sale must take two steps.

***First*,** the servicer must promptly review the application to determine if it is complete. An application is complete when it contains all the information the servicer requires from the borrower in evaluating applications for loss mitigation options.

***Second*,** the servicer must notify the borrower in less than five days (excluding legal public holidays, Saturdays, and Sundays) that it has received the application and state whether it is complete or incomplete. If the application is incomplete, the notice must advise (i) what additional documents or information are needed, and (ii) a reasonable deadline by which the borrower must submit them. A reasonable deadline is generally one of the following that maximizes the borrower's loss mitigation protections, except when that deadline would make it impracticable to permit the borrower sufficient time to obtain and submit the needed information (such as requesting a borrower to submit documentation in less than seven days): (a) the date by which any document or information submitted by the borrower will be stale or invalid; (b) the 120th day of the borrower's delinquency; (c) 90 days before a foreclosure sale; or (d) 38 days before a foreclosure sale. Servicers must exercise reasonable diligence in obtaining documents and information to complete an incomplete loss mitigation application (e.g., promptly contacting the borrower to obtain missing information or determining whether information exists in the servicer's files already that may provide the information missing from the borrower's application).

A loss mitigation application includes oral inquiries by the borrower where the borrower provides the information a servicer would evaluate in connection with a loss mitigation application. A loss mitigation application is considered expansively and includes any request by a borrower that the servicer determines whether the borrower is "prequalified" for a loss mitigation program by evaluating the borrower against preliminary criteria.

A loss mitigation application does not include oral inquiries about loss mitigation options where the borrower does not provide any information that the servicer would use to evaluate an application, including where the borrower requests information only about the application process but does not provide any information to the servicer.

If a servicer has informed a borrower that the application was complete (or identified particular information needed to complete the application), and the servicer subsequently determines that additional information or corrected documents are required, the servicer must promptly request such information or documents from the borrower and treat the application as complete under 12 CFR 1024.41(f)(2) and (g) until the borrower is given a reasonable opportunity to complete the application.

Calculating Time Periods and Determining Protections – 12 CFR 1024.41(b)(3)

12 CFR 1024.41 provides borrowers certain protections depending on whether the servicer received a complete loss mitigation application at least a specified number of days before a foreclosure sale. See, e.g., 12 CFR 1024.41(c)(1) (37 days); 12 CFR 1024.41(e) and (h) (90 days). These time periods are calculated as of the date the servicer receives a complete loss mitigation application. Thus, scheduling or rescheduling a foreclosure sale after the servicer receives the complete loss mitigation application will not affect the borrower's protections.

If no foreclosure sale is scheduled as of the date the servicer receives a complete loss mitigation application, the application is considered received more than 90 days before a foreclosure sale.

Evaluation of a Loss Mitigation Application – 12 CFR 1024.41(c)

Evaluation of a Timely Complete Loss Mitigation Application – 12 CFR 1024.41(c)(1)
A servicer that receives a complete loss mitigation application more than 37 days before a foreclosure sale must take two steps within 30 days:

First, the servicer must evaluate the borrower for all loss mitigation options available to the borrower from the owner or investor of the borrower's mortgage loan. The criteria on which a servicer offers or does not offer a loss mitigation option need not meet any particular standard. Nonetheless, a servicer's failure to follow requirements imposed by an owner or investor may demonstrate the servicer's failure to comply with the 12 CFR 1024.38(b)(2)(v) requirement that the servicer must maintain policies and procedures that are reasonably designed to ensure that the servicer can properly evaluate a borrower for all loss mitigation options for which the borrower may be eligible pursuant to any requirements established by the mortgage loan's owner or assignee; and

Second, the servicer must provide the borrower with a written notice stating which loss mitigation options, if any, the servicer will offer to the borrower. The notice must state the amount of time the borrower has to accept or reject an offered loss mitigation option pursuant to 12 CFR 1024.41(e), and, if applicable, that the borrower has the right to appeal a denial of a loan modification option as well as the time period and any requirements for making an appeal pursuant to 12 CFR 1024.41(h).

Evaluation of Incomplete Loss Mitigation Application – 12 CFR 1024.41(c)(2)(i)-(iii)
With two exceptions, a servicer may not offer a loss mitigation option based on an evaluation of an incomplete application.

1. ***Reasonable Time Exception.*** If the servicer has exercised reasonable diligence in obtaining documents and information to complete the application but the application still remains incomplete for a significant period of time without further progress by the borrower, the servicer may evaluate an incomplete application and offer the borrower a loss mitigation option. What qualifies as a significant period of time may depend on the timing of the foreclosure process. For example, 15 days may be a more significant period of time if the borrower is less than 50 days before a foreclosure sale than if the borrower is less than 120 days delinquent. The requirements in 12 CFR 1024.41 do not apply to this evaluation, and it is not considered an evaluation of a complete loss mitigation application for purposes of determining whether a request for a loss mitigation evaluation is duplicative under 12 CFR 1024.41(i).

2. ***Short-Term Forbearance Plan Exception.*** A short-term forbearance program allows a borrower to forgo making certain payments or portions of payments due over a period of no more than six months. A servicer may offer such a short-term payment forbearance program to a borrower based upon an evaluation of an incomplete loss mitigation application. If the borrower is performing pursuant to such a forbearance program, a servicer may not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, and it may not move for foreclosure judgment or an order of sale or conduct a foreclosure sale. The servicer must also comply with the

> remaining loss mitigation procedures requirement in 12 CFR 1024.41 regarding incomplete applications, such as exercising reasonable diligence in obtaining documents and information to complete the application.26 Additionally, if the borrower completes the loss mitigation application, the servicer must comply with all of the loss mitigation procedure requirements in 12 CFR 1024.41.

The commentary explains that a servicer may offer loss mitigation options to borrowers who have not submitted a loss mitigation application. Further, a servicer may offer loss mitigation options to borrowers who have submitted incomplete loss mitigation applications, so long as that offer is not based upon an evaluation of information contained in the incomplete application.

Facially Complete Applications – 12 CFR 1024.41(c)(2)(iv)

A loss mitigation application is facially complete if either (i) the servicer's initial notice under 12 CFR 1024.41(b) advised the borrower that the application was complete, or (ii) the servicer's initial notice under 12 CFR 1024.41(b) requested additional information from the borrower to complete the application and the borrower submitted such additional information.

If the servicer later discovers that additional information or corrections to a previously submitted document are required to complete the facially complete application, the servicer must promptly request the missing information or corrected documents and treat the application as complete for purposes of 12 CFR 1024.41(f)(2) and (g) until the borrower is given a reasonable opportunity to complete the application. A reasonable opportunity depends on the particular facts and circumstances, but must provide the borrower sufficient time to gather the necessary information and documents.

If the borrower completes the application within this period, the application is considered complete as of the date it was actually complete for purposes of 12 CFR 1024.41(c), and the application is considered complete as of the date it was facially complete for purposes of 12 CFR 1024.41(d), (e), (f)(2), (g), and (h).

If the borrower does not complete the application within this period, the application is considered incomplete.

Denial of any Loss Mitigation Option – 12 CFR 1024.41(d)

If the servicer denies a loss mitigation application for any trial or permanent loan modification option, the notice provided to the borrower must also state the servicer's specific reason or reasons for denying each trial or permanent loan modification option, and, if applicable, that the borrower was not evaluated on other criteria. Certain disclosures are required when a servicer denies an application for the following reasons or using the following procedures:

- Investor criteria and use of a waterfall.
    - If the servicer denies a loan modification option based upon investor criteria, the servicer must identify the owner or assignee of the mortgage loan and the specific criteria that the borrower failed to satisfy.
    - When an owner or assignee has established an evaluation criteria that sets an order ranking for evaluation of loan modification options (commonly known as a

"waterfall") and a borrower has qualified for a particular loan modification option in the waterfall, it is sufficient for the servicer to inform the borrower, with respect to other loan modification options ranked below any such option offered to a borrower, that the investor's requirements include the use of such a waterfall and that an offer of a loan modification option necessarily results in a denial for any other loan modification options below the option for which the borrower is eligible in the ranking.

- Net present value calculation. If the denial was based upon a net present value calculation, the servicer must disclose the inputs used in the calculation.
- Reasons listed. The following applies if the servicer uses a hierarchy of eligibility criteria and, after reaching the first criterion that causes a denial, does not evaluate whether the borrower would have satisfied the remaining criteria. In this instance, the servicer need only (i) provide the specific reason or reasons why the borrower was actually rejected, and (ii) notify the borrower that the borrower was not evaluated on other criteria. A servicer is not required to determine or disclose whether a borrower would have been denied based on other criteria if the servicer did not actually evaluate these additional criteria.

Borrower Response – 12 CFR 1024.41(e)

A servicer offering a loss mitigation option must provide the borrower with a minimum period of time to accept or reject the option, depending on when the servicer receives a complete application. If the application was complete 90 days or more before a foreclosure sale, the servicer must give the borrower at least 14 days to decide. If it was complete fewer than 90 but more than 37 days before a foreclosure sale, the servicer must give the borrower at least seven days to decide.

A borrower's failure to respond on time can be treated as a rejection of the loss mitigation options, with two exceptions. First, a borrower who is offered a trial loan modification plan and submits payments that would have been owed under that plan before the deadline for accepting must be given a reasonable time to fulfill any remaining requirements of the servicer for acceptance of the trial loan modification plan. Second, a servicer must give a borrower who has a pending appeal until 14 days after the servicer provides notice of its determination regarding resolution of that appeal to decide whether to accept any offered loss mitigation option.

Prohibition on Foreclosure Referral – 12 CFR 1024.41(f)

A servicer cannot make the first foreclosure notice or filing for any judicial or non-judicial process until (i) the borrower is more than 120 days delinquent, (ii) the foreclosure is based on a borrower's violation of a due-on-sale clause, or (iii) the servicer is joining a subordinate lienholder's foreclosure action. The commentary states that whether a document qualifies as the first notice or filing depends on the foreclosure process at issue:

- Judicial foreclosure. Where foreclosure procedure requires a court action or proceeding, the first notice or filing is the earliest document required to be filed with a court or other judicial body to commence the action or proceeding. Depending on the particular foreclosure process, examples of these documents could be a complaint, petition, order to docket, or notice of hearing;
- Non-judicial foreclosure – recording or publication requirement. Where foreclosure procedure does not require an action or court proceeding (such as under a power of sale),

the first notice or filing is the earliest document required to be recorded or published to initiate the foreclosure process; or

- Non-judicial foreclosure – no recording or publication requirement. Where foreclosure procedure does not require an action or court proceeding, and also does not require any document to be recorded or published, the first notice or filing is the earliest document that establishes, sets, or schedules a date for the foreclosure sale.

The commentary further states that a document provided to the borrower but not initially required to be filed, recorded, or published is not considered the first notice or filing on the sole basis that the documents must later be included as an attachment accompanying another document that is required to be filed, recorded, or published to carry out a foreclosure.

If a borrower submits a complete loss mitigation application before the 120th day of delinquency or before the servicer makes the first foreclosure notice or filing, then the servicer cannot make the first foreclosure notice or filing unless one of the following occurs: (i) the servicer sends a notice to the borrower stating that the borrower is ineligible for any loss mitigation option and if an appeal is available, either the borrower did not timely appeal, or the appeal has been denied; (ii) the borrower rejects all the offered loss mitigation options; or (iii) the borrower fails to perform under a loss mitigation agreement.

Prohibition on Foreclosure Sale – 12 CFR 1024.41(g)

If a borrower submits a complete loss mitigation application after the servicer has made the first foreclosure notice or filing but more than 37 days before a foreclosure sale, the servicer cannot conduct a foreclosure sale or move for foreclosure judgment or sale unless one of the following occurs: (i) the servicer sends a notice to the borrower stating that the borrower is ineligible for any loss mitigation option and the appeal process is inapplicable, the borrower did not timely appeal, or the appeal has been denied; (ii) the borrower rejects all the offered loss mitigation options; or (iii) the borrower fails to perform under a loss mitigation agreement.

Appeal Process – 12 CFR 1024.41(h)

A borrower has the right to appeal a servicer's denial of a loss mitigation application for any trial or permanent loan modification available to the borrower if the borrower submitted a complete application 90 days or more before a foreclosure sale (or during the pre-foreclosure period set forth in 12 CFR 1024.41(f)). The borrower must commence the appeal within 14 days after the servicer provides the notice stating the servicer's determination of which loss mitigation options, if any, it will offer to the borrower.

Within 30 days of the borrower making the appeal, the servicer must provide a notice to the borrower stating: (i) whether it will offer the borrower a loss mitigation option based on the appeal, and (ii) if applicable, how long the borrower has to accept or reject this loss mitigation option or a previously offered loss mitigation option. If the servicer offers a loss mitigation option after an appeal, the servicer must provide the borrower at least 14 days to decide whether to accept the offered loss mitigation option.

The servicer's personnel who evaluated the borrower's application cannot also evaluate the appeal, although personnel who supervised the initial evaluation may evaluate the appeal so long as they were not directly involved in the initial evaluation.

Duplicative Requests – 12 CFR 1024.41(i)

A servicer is required to comply with these loss mitigation procedures for only a single complete loss mitigation application for a borrower's mortgage loan account.

Small Servicer Requirements – 12 CFR 1024.41(j)

A small servicer cannot make the first foreclosure notice or filing required by any judicial or non-judicial foreclosure process until (i) the borrower is more than 120 days delinquent, (ii) the foreclosure is based on a borrower's violation of a due-on-sale clause, or (iii) the servicer is joining a subordinate lienholder's foreclosure action. If the borrower is performing according to the terms of a loss mitigation agreement, a small servicer also cannot make the first foreclosure notice or filing, move for a foreclosure judgment or order of sale, or conduct a foreclosure sale.

Regulatory Text – Continuity of Contact [12 CFR § 1024.40]

(a) ***Enforcement and limitations.*** *A borrower may enforce the provisions of this section pursuant to section 6(f) of RESPA (12 U.S.C. 2605(f)). Nothing in §1024.41 imposes a duty on a servicer to provide any borrower with any specific loss mitigation option. Nothing in §1024.41 should be construed to create a right for a borrower to enforce the terms of any agreement between a servicer and the owner or assignee of a mortgage loan, including with respect to the evaluation for, or offer of, any loss mitigation option or to eliminate any such right that may exist pursuant to applicable law.*

(b) ***Receipt of a loss mitigation application***

(1) ***Complete loss mitigation application.*** *A complete loss mitigation application means an application in connection with which a servicer has received all the information that the servicer requires from a borrower in evaluating applications for the loss mitigation options available to the borrower. A servicer shall exercise reasonable diligence in obtaining documents and information to complete a loss mitigation application.*

(2) ***Review of loss mitigation application submission***

(i) ***Requirements.*** *If a servicer receives a loss mitigation application 45 days or more before a foreclosure sale, a servicer shall:*

(A) Promptly upon receipt of a loss mitigation application, review the loss mitigation application to determine if the loss mitigation application is complete; and

(B) Notify the borrower in writing within 5 days (excluding legal public holidays, Saturdays, and Sundays) after receiving the loss mitigation application that the servicer acknowledges receipt of the loss mitigation application and that the servicer has determined that the loss mitigation application is either complete or incomplete. If a loss mitigation application is incomplete, the notice shall state the additional documents and information the borrower must submit to make the loss mitigation application complete and the applicable date pursuant to paragraph (b)(2)(ii) of this section. The notice to the borrower shall include a statement that the borrower should consider contacting servicers of any other mortgage loans secured by the same property to discuss available loss mitigation options.

(ii) ***Time period disclosure.*** *The notice required pursuant to paragraph (b)(2)(i)(B) of this section must include a reasonable date by which the borrower should submit the documents and information necessary to make the loss mitigation application complete.*

(3) ***Determining protections.*** *To the extent a determination of whether protections under this section apply to a borrower is made on the basis of the number of days between when a complete loss mitigation application is received and when a foreclosure sale occurs, such determination shall be made as of the date a complete loss mitigation application is received.*

(c) ***Evaluation of loss mitigation applications***

(1) ***Complete loss mitigation application.*** *If a servicer receives a complete loss mitigation application more than 37 days before a foreclosure sale, then, within 30 days of receiving a borrower's complete loss mitigation application, a servicer shall:*

(i) Evaluate the borrower for all loss mitigation options available to the borrower; and

(ii) Provide the borrower with a notice in writing stating the servicer's determination of which loss mitigation options, if any, it will offer to the borrower on behalf of the owner or assignee of the mortgage. The servicer shall include in this notice the amount of time the borrower has to accept or reject an offer of a loss mitigation program as provided for in paragraph (e) of this section, if applicable, and a notification, if applicable, that the borrower has the right to appeal the denial of any loan modification option as well as the amount of time the borrower has to file such an appeal and any requirements for making an appeal, as provided for in paragraph (h) of this section.

(2) ***Incomplete loss mitigation application evaluation***

(i) ***In general.*** *Except as set forth in paragraphs (c)(2)(ii) and (iii) of this section, a servicer shall not evade the requirement to evaluate a complete loss mitigation application for all loss mitigation options available to the borrower by offering a loss mitigation option based upon an evaluation of any information provided by a borrower in connection with an incomplete loss mitigation application.*

(ii) ***Reasonable time.*** *Notwithstanding paragraph (c)(2)(i) of this section, if a servicer has exercised reasonable diligence in obtaining documents and information to complete a loss mitigation application, but a loss mitigation application remains incomplete for a significant period of time under the circumstances without further progress by a borrower to make the loss mitigation application complete, a servicer may, in its discretion, evaluate an incomplete loss mitigation application and offer a borrower a loss mitigation option. Any such evaluation and offer is not subject to the requirements of this section and shall not constitute an evaluation of a single complete loss mitigation application for purposes of paragraph (i) of this section.*

(iii) ***Payment forbearance.*** *Notwithstanding paragraph (c)(2)(i) of this section, a servicer may offer a short-term payment forbearance program to a borrower based upon an evaluation of an incomplete loss mitigation application. A servicer shall not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, and shall not move for foreclosure judgment or order of sale, or conduct a foreclosure sale, if a borrower is performing pursuant to the terms of a payment forbearance program offered pursuant to this section.*

(iv) ***Facially complete application.*** *If a borrower submits all the missing documents and information as stated in the notice required pursuant to §1026.41(b)(2)(i)(B), or no additional information is requested in such notice, the application shall be considered facially complete. If the servicer later discovers additional information or corrections to a previously submitted document are required to complete the application, the servicer must promptly request the missing information or corrected documents and treat the application as complete for the purposes of paragraphs (f)(2) and (g) of this section until the borrower is given a reasonable opportunity to complete the application. If the borrower completes the application within this period, the application shall be considered complete as of the date it was facially complete, for the purposes of paragraphs (d), (e), (f)(2), (g), and (h) of this section, and as of the date the application was actually complete for the purposes of paragraph (c). A servicer that complies with this paragraph will be deemed to have fulfilled its obligation to provide an accurate notice under paragraph (b)(2)(i)(B).*

(d) ***Denial of loan modification options.*** *If a borrower's complete loss mitigation application is denied for any trial or permanent loan modification option available to the borrower pursuant to paragraph (c) of this section, a servicer shall state in the notice sent to the borrower pursuant to paragraph (c)(1)(ii) of this section the specific reason or reasons for the servicer's determination for each such trial or permanent loan modification option and, if applicable, that the borrower was not evaluated on other criteria.*

(e) ***Borrower response***

(1) ***In general****. Subject to paragraphs (e)(2)(ii) and (iii) of this section, if a complete loss mitigation application is received 90 days or more before a foreclosure sale, a servicer may require that a borrower accept or reject an offer of a loss mitigation option no earlier than 14 days after the servicer provides the offer of a loss mitigation option to the borrower. If a complete loss mitigation application is received less than 90 days before a foreclosure sale, but more than 37 days before a foreclosure sale, a servicer may require that a borrower accept or reject an offer of a loss mitigation option no earlier than 7 days after the servicer provides the offer of a loss mitigation option to the borrower.*

(2) Rejection

(i) ***In general.*** *Except as set forth in paragraphs (e)(2)(ii) and (iii) of this section, a servicer may deem a borrower that has not accepted an offer of a loss mitigation option within the deadline established pursuant to paragraph (e)(1) of this section to have rejected the offer of a loss mitigation option.*

(ii) ***Trial Loan Modification Plan.*** *A borrower who does not satisfy the servicer's requirements for accepting a trial loan modification plan, but submits the payments that would be owed pursuant to any such plan within the deadline established pursuant to paragraph (e)(1) of this section, shall be provided a reasonable period of time to fulfill any remaining requirements of the servicer for acceptance of the trial loan modification plan beyond the deadline established pursuant to paragraph (e)(1) of this section.*

(iii) ***Interaction with appeal process.*** *If a borrower makes an appeal pursuant to paragraph (h) of this section, the borrower's deadline for accepting a loss mitigation option offered pursuant to paragraph (c)(1)(ii) of this section shall be extended until 14 days after the servicer provides the notice required pursuant to paragraph (h)(4) of this section.*

(f) ***Prohibition on foreclosure referral***

(1) ***Pre-foreclosure review period.*** *A servicer shall not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process unless:*

(i) A borrower's mortgage loan obligation is more than 120 days delinquent;

(ii) The foreclosure is based on a borrower's violation of a due-on-sale clause; or

(iii) The servicer is joining the foreclosure action of a subordinate lienholder.

(2) ***Application received before foreclosure referral.*** *If a borrower submits a complete loss mitigation application during the pre-foreclosure review period set forth in paragraph (f)(1) of this section or before a servicer has made the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, a servicer shall not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process unless:*

(i) The servicer has sent the borrower a notice pursuant to paragraph (c)(1)(ii) of this section that the borrower is not eligible for any loss mitigation option and the appeal process in paragraph (h) of this section is not applicable, the borrower has not requested an appeal within the applicable time period for requesting an appeal, or the borrower's appeal has been denied;

(ii) The borrower rejects all loss mitigation options offered by the servicer; or

(iii) The borrower fails to perform under an agreement on a loss mitigation option.

(g) ***Prohibition on foreclosure sale.*** *If a borrower submits a complete loss mitigation application after a servicer has made the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process but more than 37 days before a foreclosure sale, a servicer shall not move for foreclosure judgment or order of sale, or conduct a foreclosure sale, unless:*

(1) The servicer has sent the borrower a notice pursuant to paragraph (c)(1)(ii) of this section that the borrower is not eligible for any loss mitigation option and the appeal process in paragraph (h) of this section is not applicable, the borrower has not requested an appeal within the applicable time period for requesting an appeal, or the borrower's appeal has been denied;

(2) The borrower rejects all loss mitigation options offered by the servicer; or

(3) The borrower fails to perform under an agreement on a loss mitigation option.

(h) ***Appeal process***

(1) ***Appeal process required for loan modification denials.*** *If a servicer receives a complete loss mitigation application 90 days or more before a foreclosure sale or during the period set forth in paragraph (f) of this section, a servicer shall permit a borrower to appeal the servicer's determination to deny a borrower's loss mitigation application for any trial or permanent loan modification program available to the borrower.*

(2) ***Deadlines.*** *A servicer shall permit a borrower to make an appeal within 14 days after the servicer provides the offer of a loss mitigation option to the borrower pursuant to paragraph (c)(1)(ii) of this section.*

(3) ***Independent evaluation.*** *An appeal shall be reviewed by different personnel than those responsible for evaluating the borrower's complete loss mitigation application.*

(4) ***Appeal determination.*** *Within 30 days of a borrower making an appeal, the servicer shall provide a notice to the borrower stating the servicer's determination of whether the servicer will offer the borrower a loss mitigation option based upon the appeal and, if applicable, how long the borrower has to accept or reject such an offer or a prior offer of a loss mitigation option. A servicer may require that a borrower accept or reject an offer of a loss mitigation option after an appeal no earlier than 14 days after the servicer provides the notice to a borrower. A servicer's determination under this paragraph is not subject to any further appeal.*

(i) ***Duplicative requests.*** *A servicer is only required to comply with the requirements of this section for a single complete loss mitigation application for a borrower's mortgage loan account.*

(j) ***Small servicer requirements.*** *A small servicer shall be subject to the prohibition on foreclosure referral in paragraph (f)(1) of this section. A small servicer shall not make the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process and shall not move for foreclosure judgment or order of sale, or conduct a foreclosure sale, if a borrower is performing pursuant to the terms of an agreement on a loss mitigation option.*

Regulatory Commentary – Loss Mitigation Procedures [12 CFR § 1024.41]

41(b)(1) Complete loss mitigation application.

1. ***In general.*** *A servicer has flexibility to establish its own application requirements and to decide the type and amount of information it will require from borrowers applying for loss mitigation options.*

2. ***When an inquiry or prequalification request becomes an application.*** *A servicer is encouraged to provide borrowers with information about loss mitigation programs. If in giving information to the borrower, the borrower expresses an interest in applying for a loss mitigation option and provides information the servicer would evaluate in connection with a loss mitigation application, the borrower's inquiry or prequalification request has become a loss mitigation application. A loss mitigation application is considered expansively and includes any "prequalification" for a loss mitigation option. For example, if a borrower requests that a servicer determine if the borrower is "prequalified" for a loss mitigation program by evaluating the borrower against preliminary criteria to determine eligibility for a loss mitigation option, the request constitutes a loss mitigation application.*

3. ***Examples of inquiries that are not applications.*** *The following examples illustrate situations in which only an inquiry has taken place and no loss mitigation application has been submitted:*

i. A borrower calls to ask about loss mitigation options and servicer personnel explain the loss mitigation options available to the borrower and the criteria for determining the borrower's eligibility for any such loss mitigation option. The borrower does not, however, provide any information that a servicer would consider for evaluating a loss mitigation application.

ii. A borrower calls to ask about the process for applying for a loss mitigation option but the borrower does not provide any information that a servicer would consider for evaluating a loss mitigation application.

4. ***Diligence requirements.*** *Although a servicer has flexibility to establish its own requirements regarding the documents and information necessary for a loss mitigation application, the servicer must act with reasonable diligence to collect information needed to complete the application. Further, a servicer must request information necessary to make a loss mitigation application complete promptly after receiving the loss mitigation application. Reasonable diligence includes, without limitation, the following actions:*

i. A servicer requires additional information from the applicant, such as an address or a telephone number to verify employment; the servicer contacts the applicant promptly to obtain such information after receiving a loss mitigation application;

ii. Servicing for a mortgage loan is transferred to a servicer and the borrower makes an incomplete loss mitigation application to the transferee servicer after the transfer; the transferee servicer reviews documents provided by the transferor servicer to determine if information required to make the loss mitigation application complete is contained within documents transferred by the transferor servicer to the servicer; and

iii. A servicer offers a borrower a payment forbearance program based on an incomplete loss mitigation application; the servicer notifies the borrower that he or she is being offered a payment forbearance program based on an evaluation of an incomplete application, and that the borrower has the option of completing the application to receive a full evaluation of all loss mitigation options available to the borrower. If a servicer provides such a notification, the borrower remains in compliance with the payment forbearance program, and the borrower does not request further assistance, the servicer could suspend reasonable diligence efforts until near the end of the payment forbearance program. Near the end of the program, and prior to the end of the forbearance period, it may be necessary for the servicer to contact the borrower to determine if the borrower wishes to complete the application and proceed with a full loss mitigation evaluation.

5. ***Information not in the borrower's control.*** *A loss mitigation application is complete when a borrower provides all information required from the borrower notwithstanding that additional information may be required by a servicer that is not in the control of a borrower. For example, if a servicer requires a consumer report for a loss mitigation evaluation, a loss mitigation application is considered complete if a borrower has submitted all information required from the borrower without regard to whether a servicer has obtained a consumer report that a servicer has requested from a consumer reporting agency.*

41(b)(2)Review of loss mitigation application submission.

Paragraph 41(b)(2)(i)(B).

1. ***Later discovery of additional information required to evaluate application.*** *Even if a servicer has informed a borrower that an application is complete (or notified the borrower of specific information necessary to complete an incomplete application), if the servicer determines, in the course of evaluating the loss mitigation application submitted by the borrower, that additional information or a corrected version of a previously submitted document is required, the servicer must promptly request the additional information or corrected document from the borrower pursuant to the reasonable diligence obligation in §1024.41(b)(1). See §1024.41(c)(2)(iv) addressing facially complete applications.*

41(b)(2)(ii) Time period disclosure.

1. ***Reasonable date.*** *Section 1024.41(b)(2)(ii) requires that a notice informing a borrower that a loss mitigation application is incomplete must include a reasonable date by which the borrower should submit the documents and information necessary to make the loss mitigation application complete. In determining a reasonable date, a servicer should select the deadline that preserves the maximum borrower rights under §1024.41 based on the milestones listed below, except when doing so would be impracticable to permit the borrower sufficient time to obtain and submit the type of documentation needed. Generally, it would be impracticable for a borrower to obtain and submit documents in less than seven days. In setting a date, the following milestones should be considered (if the date of a foreclosure sale is not known, a servicer may use a reasonable estimate of the date for which a foreclosure sale may be scheduled):*

i. The date by which any document or information submitted by a borrower will be considered stale or invalid pursuant to any requirements applicable to any loss mitigation option available to the borrower;

ii. The date that is the 120th day of the borrower's delinquency;

iii. The date that is 90 days before a foreclosure sale;

iv. The date that is 38 days before a foreclosure sale.

41(b)(3) Determining Protections.

1. ***Foreclosure sale not scheduled.*** *If no foreclosure sale has been scheduled as of the date that a complete loss mitigation application is received, the application is considered to have been received more than 90 days before any foreclosure sale.*

2. ***Foreclosure sale re-scheduled****. The protections under §1024.41 that have been determined to apply to a borrower pursuant to §1024.41(b)(3) remain in effect thereafter, even if a foreclosure sale is later scheduled or rescheduled.*

41(c)(1) Complete loss mitigation application.

1. ***Definition of "evaluation."*** *The conduct of a servicer's evaluation with respect to any loss mitigation option is in the sole discretion of a servicer. A servicer meets the requirements of §1024.41(c)(1)(i) if the servicer makes a determination regarding the borrower's eligibility for a loss mitigation program. Consistent with §1024.41(a), because nothing in section 1024.41 should be construed to permit a borrower to enforce the terms of any agreement between a servicer and the owner or assignee of a mortgage loan, including with respect to the evaluation for, or provision of, any loss mitigation option, §1024.41(c)(1) does not require that an evaluation meet any standard other than the discretion of the servicer.*

2. ***Loss mitigation options available to a borrower.*** *The loss mitigation options available to a borrower are those options offered by an owner or assignee of the borrower's mortgage loan. Loss mitigation options administered by a servicer for an owner or assignee of a mortgage loan other than the owner or assignee of the borrower's mortgage loan are not available to the borrower solely because such options are administered by the servicer. For example:*

i. A servicer services mortgage loans for two different owners or assignees of mortgage loans. Those entities each have different loss mitigation programs. loss mitigation options not offered by the owner or assignee of the borrower's mortgage loan are not available to the borrower; or

ii. The owner or assignee of a borrower's mortgage loan has established pilot programs, temporary programs, or programs that are limited by the number of participating borrowers. Such loss mitigation options are available to a borrower. However, a servicer evaluates whether a borrower is eligible for any such program consistent with criteria established by an owner or assignee of a mortgage loan. For example, if an owner or assignee has limited a pilot program to a certain geographic area or to a limited number of participants, and the servicer determines that a borrower is not eligible based on any such requirement, the servicer shall inform the borrower that the investor requirement for the program is the basis for the denial.

3. Offer of a non-home retention option. A servicer's offer of a non-home retention option may be conditional upon receipt of further information not in the borrower's possession and necessary to establish the parameters of a servicer's offer. For example, a servicer complies with the requirement for evaluating the borrower for a short sale option if the servicer offers the borrower the opportunity to enter into a listing or marketing period agreement but indicates that specifics of an acceptable short sale transaction may be subject to further information obtained from an appraisal or title search.

41(c)(2) Incomplete loss mitigation application evaluation.

41(c)(2)(i) In general.

1. ***Offer of a loss mitigation option without an evaluation of a loss mitigation application.*** *Nothing in §1024.41(c)(2)(i) prohibits a servicer from offering loss mitigation options to a borrower who has not submitted a loss mitigation application. Further, nothing in §1024.41(c)(2)(i) prohibits a servicer from offering a loss mitigation option to a borrower who has submitted an incomplete loss mitigation application where the offer of the loss mitigation option is not based on any evaluation of information submitted by the borrower in connection with such loss mitigation application. For example, if a servicer offers trial loan modification programs to all borrowers who become 150 days delinquent without an application or consideration of any information provided by a borrower in connection with a loss mitigation application, the servicer's offer of any such program does not violate §1024.41(c)(2)(i), and a servicer is not required to comply with §1024.41 with respect to any such program, because the offer of the loss mitigation option is not based on an evaluation of a loss mitigation application.*

2. ***Servicer discretion.*** *Although a review of a borrower's incomplete loss mitigation application is within a servicer's discretion, and is not required by §1024.41, a servicer may be required separately, in accordance with policies and procedures maintained pursuant to §1024.38(b)(2)(v), to properly evaluate a borrower who submits an application for a loss mitigation option for all loss mitigation options available to the borrower pursuant to any requirements established by the owner or assignee of the borrower's mortgage loan. Such evaluation may be subject to requirements applicable to loss mitigation applications otherwise considered incomplete pursuant to §1024.41.*

41(c)(2)(ii) Reasonable time.

1. ***Significant period of time.*** *A significant period of time under the circumstances may include consideration of the timing of the foreclosure process. For example, if a borrower is less than 50 days before a foreclosure sale, an application remaining incomplete for 15 days may be a more significant period of time under the circumstances than if the borrower is still less than 120 days delinquent on a mortgage loan obligation.*

41(c)(2)(iii) Payment forbearance.

1. ***Short-term payment forbearance program.*** *The exemption in §1024.41(c)(2)(iii) applies to short-term payment forbearance programs. A payment forbearance program is a loss mitigation option for which a servicer allows a borrower to forgo making certain payments or portions of payments for a period of time. A short-term payment forbearance program allows the forbearance of payments due over periods of no more than six months. Such a program would be short-term regardless of the amount of time a servicer allows the borrower to make up the missing payments.*

2. ***Payment forbearance and incomplete applications.*** *Section 1024.41(c)(2)(iii) allows a servicer to offer a borrower a short-term payment forbearance program based on an evaluation of an incomplete loss mitigation application. Such an incomplete loss mitigation application is still subject to the other obligations in §1024.41, including the obligation in §1024.41(b)(2) to review the application to determine if it is complete, the obligation in §1024.41(b)(1) to exercise reasonable diligence in obtaining documents and information to complete a loss mitigation application (see comment 41(b)(1)-4.iii), and the obligation to provide the borrower with the §1024.41(b)(2)(i)(B) notice that the servicer acknowledges the receipt of the application and has determined the application is incomplete.*

3. ***Payment forbearance and complete applications.*** *Even if a servicer offers a borrower a payment forbearance program based on an evaluation of an incomplete loss mitigation application, the servicer must still comply with all the requirements in §1024.41 if the borrower completes his or her loss mitigation application.*

41(c)(2)(iv) Facially complete application.

1. ***Reasonable opportunity.*** *Section 1024.41(c)(2)(iv) requires a servicer to treat a facially complete application as complete for the purposes of paragraphs (f)(2) and (g) until the borrower has been given a reasonable opportunity to complete the application. A reasonable opportunity requires the servicer to notify the borrower of what additional information or corrected documents are required, and to afford the borrower sufficient time to gather the information and documentation necessary to complete the application and submit it to the servicer. The amount of time that is sufficient for this purpose will depend on the facts and circumstances.*

2. ***Borrower fails to complete the application.*** *If the borrower fails to complete the application within the timeframe provided under §1024.41(c)(2)(iv), the application shall be considered incomplete.*

41(d) Denial of loan modification options.

1. ***Investor requirements.*** *If a trial or permanent loan modification option is denied because of a requirement of an owner or assignee of a mortgage loan, the specific reasons in the notice provided to the borrower must identify the owner or assignee of the mortgage loan and the requirement that is the basis of the denial. A statement that the denial of a loan modification option is based on an investor requirement, without additional information specifically identifying the relevant investor or guarantor and the specific applicable requirement, is insufficient. However, where an owner or assignee has established an evaluation criteria that sets an order ranking for evaluation of loan modification options (commonly known as a waterfall) and a borrower has qualified for a particular loan modification option in the ranking established by the owner or assignee, it is sufficient for the servicer to inform the borrower, with respect to other loan modification options ranked below any such option offered to a borrower, that the investor's requirements include the use of such a ranking and that an offer of a loan modification option necessarily results in a denial*

for any other loan modification options below the option for which the borrower is eligible in the ranking.

2. ***Net present value calculation.*** *If a trial or permanent loan modification is denied because of a net present value calculation, the specific reasons in the notice provided to the borrower must include the inputs used in the net present value calculation. A servicer may combine other notices required by applicable law, including, without limitation, a notice with respect to an adverse action required by Regulation B (12 CFR 1002 et seq.) or a notice required pursuant to the Fair Credit Reporting Act, with the notice required pursuant to §1024.41(d), unless otherwise prohibited by applicable law.*

3. ***Determination not to offer a loan modification option constitutes a denial.*** *A servicer's determination not to offer a borrower a loan modification available to the borrower constitutes a denial of the borrower for that loan modification option, notwithstanding whether a servicer offers a borrower a different loan modification option or other loss mitigation option.*

4. ***Reasons listed.*** *A servicer is required to disclose the actual reason or reasons for the denial. If a servicer's systems establish a hierarchy of eligibility criteria and reach the first criterion that causes a denial but do not evaluate the borrower based on additional criteria, a servicer complies with the rule by providing only the reason or reasons with respect to which the borrower was actually evaluated and rejected as well as notification that the borrower was not evaluated on other criteria. A servicer is not required to determine or disclose whether a borrower would have been denied on the basis of additional criteria if such criteria were not actually considered.*

41(f) Prohibition on foreclosure referral.

1. ***Prohibited activities.*** *Section 1024.41(f) prohibits a servicer from making the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process under certain circumstances. Whether a document is considered the first notice or filing is determined on the basis of foreclosure procedure under the applicable State law.*

i. Where foreclosure procedure requires a court action or proceeding, a document is considered the first notice or filing if it is the earliest document required to be filed with a court or other judicial body to commence the action or proceeding (e.g., a complaint, petition, order to docket, or notice of hearing).

ii. Where foreclosure procedure does not require an action or court proceeding, such as under a power of sale, a document is considered the first notice or filing if it is the earliest document required to be recorded or published to initiate the foreclosure process.

iii. Where foreclosure procedure does not require any court filing or proceeding, and also does not require any document to be recorded or published, a document is considered the first notice or filing if it is the earliest document that establishes, sets, or schedules a date for the foreclosure sale.

iv. A document provided to the borrower but not initially required to be filed, recorded, or published is not considered the first notice or filing on the sole basis that the document must later be included as an attachment accompanying another document that is required to be filed, recorded, or published to carry out a foreclosure.

41(g) Prohibition on foreclosure sale.

1. ***Dispositive motion.*** *The prohibition on a servicer moving for judgment or order of sale includes making a dispositive motion for foreclosure judgment, such as a motion for default judgment, judgment on the pleadings, or summary judgment, which may directly result in a judgment of foreclosure or order of sale. A servicer that has made any such motion before receiving a complete loss mitigation application has not moved for a foreclosure judgment or order of sale if the servicer takes reasonable steps to avoid a ruling on such motion or issuance of such order prior to completing the procedures required by §1024.41, notwithstanding whether any such action successfully avoids a ruling on a dispositive motion or issuance of an order of sale.*

2. ***Proceeding with the foreclosure process.*** *Nothing in §1024.41(g) prevents a servicer from proceeding with the foreclosure process, including any publication, arbitration, or mediation requirements established by applicable law, when the first notice or filing for a foreclosure proceeding occurred before a servicer receives a complete loss mitigation application so long as any such steps in the foreclosure process do not cause or directly result in the issuance of a foreclosure judgment or order of sale, or the conduct of a foreclosure sale, in violation of §1024.41.*

3. ***Interaction with foreclosure counsel.*** *A servicer is responsible for promptly instructing foreclosure counsel retained by the servicer not to proceed with filing for foreclosure judgment or order of sale, or to conduct a foreclosure sale, in violation of §1024.41(g) when a servicer has received a complete loss mitigation application, which may include instructing counsel to move for a continuance with respect to the deadline for filing a dispositive motion.*

4. ***Loss mitigation applications submitted 37 days or less before foreclosure sale.*** *Although a servicer is not required to comply with the requirements in §1024.41 with respect to a loss mitigation application submitted 37 days or less before a foreclosure sale, a servicer is required separately, in accordance with policies and procedures maintained pursuant to §1024.38(b)(2)(v) to properly evaluate a borrower who submits an application for a loss mitigation option for all loss mitigation options available to the borrower pursuant to any requirements established by the owner or assignee of the borrower's mortgage loan. Such evaluation may be subject to requirements applicable to a review of a loss mitigation application submitted by a borrower 37 days or less before a foreclosure sale.*

Paragraph 41(g)(3).

1. ***Short sale listing period.*** *An agreement for a short sale transaction, or other similar loss mitigation option, typically includes marketing or listing periods during which a servicer will allow a borrower to market a short sale transaction. A borrower is deemed to be performing under an agreement on a short sale, or other similar loss mitigation option, during the term of a marketing or listing period.*

2. ***Short sale agreement****. If a borrower has not obtained an approved short sale transaction at the end of any marketing or listing period, a servicer may determine that a borrower has failed to perform under an agreement on a loss mitigation option. An approved short sale transaction is a short sale transaction that has been approved by all relevant parties, including the servicer, other affected lienholders, or insurers, if applicable, and the servicer has received proof of funds or financing, unless circumstances otherwise indicate that an approved short sale transaction is not likely to occur.*

41(h) Appeal process.

Paragraph 41(h)(3).

1. ***Supervisory personnel.*** *The appeal may be evaluated by supervisory personnel that are responsible for oversight of the personnel that conducted the initial evaluation, as long as the supervisory personnel were not directly involved in the initial evaluation of the borrower's complete loss mitigation application.*

41(i) Duplicative requests.

1. ***Servicing transfers****. A transferee servicer is required to comply with the requirements of §1024.41 regardless of whether a borrower received an evaluation of a complete loss mitigation application from a transferor servicer. Documents and information transferred from a transferor servicer to a transferee servicer may constitute a loss mitigation application to the transferee servicer and may cause a transferee servicer to be required to comply with the requirements of §1024.41 with respect to a borrower's mortgage loan account.*

2. ***Application in process during servicing transfer.*** *A transferee servicer must obtain documents and information submitted by a borrower in connection with a loss mitigation application during a servicing transfer, consistent with policies and procedures adopted pursuant to §1024.38. A servicer that obtains the servicing of a mortgage loan for which an evaluation of a complete loss mitigation option is in process should continue the evaluation to the extent practicable. For purposes of §1024.41(e)(1), 1024.41(f), 1024.41(g), and 1024.41(h), a transferee servicer must consider documents and information received from a transferor servicer that constitute a complete loss mitigation application for the transferee servicer to have been received by the transferee servicer as of the date such documents and information were provided to the transferor servicer.*

Regulatory Commentary for MS-3

1. Where the model forms MS-3(A), MS-3(B), MS-3(C), and MS-3(D) use the term "hazard insurance," the servicer may substitute "hazard insurance" with "homeowners' insurance" or "property insurance."

MS-3(A) – MODEL FORM FOR FORCE-PLACED INSURANCE NOTICE CONTAINING INFORMATION REQUIRED BY § 1024.37(C)(2)

[Name and Mailing Address of Servicer]

[Date of Notice]

[Borrower's Name]

[Borrower's Mailing Address]

Subject: **Please provide insurance information for** [Property Address]

Dear [Borrower's Name]:

Our records show that your [hazard] [Insurance Type] insurance [is expiring] [expired], and we do not have evidence that you have obtained new coverage. **Because [hazard] [Insurance Type] insurance is required on your property, [we bought insurance for your property] [we plan to buy insurance for your property].** You must pay us for any period during which the insurance we buy is in effect but you do not have insurance.

You should immediately provide us with your insurance information. [Describe the insurance information the borrower must provide]. [The information must be provided in writing.]

The insurance we [bought] [buy]:

- **May be more expensive than the insurance you can buy yourself.**
- **May not provide as much coverage as an insurance policy you buy yourself.**

If you have any questions, please contact us at [telephone number].

[If applicable, provide a statement advising a borrower to review additional information provided in the same transmittal.]

MS-3(B) – MODEL FORM FOR FORCE-PLACED INSURANCE NOTICE CONTAINING INFORMATION REQUIRED BY § 1024.37(D)(2)(I)

[Name and Mailing Address of Servicer]

[Date of Notice]

[Borrower's Name]

[Borrower's Mailing Address]

Subject: **Second and final notice – please provide insurance information for** [Property Address]

Dear [Borrower's Name]:

This is your **second and final notice** that our records show that your [hazard] [Insurance Type] insurance [is expiring] [expired], and we do not have evidence that you have obtained new coverage. **Because [hazard] [Insurance Type] insurance is required on your property, [we bought insurance for your property] [we plan to buy insurance for your property].** You must pay us for any period during which the insurance we buy is in effect but you do not have insurance.

You should immediately provide us with your insurance information. [Describe the insurance information the borrower must provide]. [The information must be provided in writing.]

The insurance we [bought] [buy]:

- **[Costs $[premium charge]] [Will cost an estimated $[premium charge]] annually, which may be more expensive than insurance you can buy yourself.**
- **May not provide as much coverage as an insurance policy you buy yourself.**

If you have any questions, please contact us at [telephone number].

[If applicable, provide a statement advising a borrower to review additional information provided in the same transmittal.]

MS-3(C) – MODEL FORM FOR FORCE-PLACED INSURANCE NOTICE CONTAINING INFORMATION REQUIRED BY § 1024.37(D)(2)(II)

[Name and Mailing Address of Servicer]

[Date of Notice]

[Borrower's Name]

[Borrower's Mailing Address]

Subject: **Second and final notice – please provide insurance information for** [Property Address]

Dear [Borrower's Name]:

We received the insurance information you provided, but we are unable to verify coverage from [Date Range]. **Please provide us with insurance information for [Date Range] immediately.** We will charge you for insurance we [bought] [plan to buy] for [Date Range] unless we can verify that you have insurance coverage for [Date Range]. The insurance we [bought] [buy]:

- ***Costs $[premium charge]] [Will cost an estimated $[premium charge]] annually, which may be more expensive than insurance you can buy yourself.***
- ***May not provide as much coverage as an insurance policy you buy yourself.***

If you have any questions, please contact us at [telephone number].

[If applicable, provide a statement advising a borrower to review additional information provided in the same transmittal.]

MS-3(D) – MODEL FORM FOR RENEWAL OR REPLACEMENT OF FORCE-PLACED INSURANCE NOTICE CONTAINING INFORMATION REQUIRED BY TO § 1024.37(E)(2)

[Name and Mailing Address of Servicer]

[Date of Notice]

[Borrower's Name]

[Borrower's Mailing Address]

Subject: **Please update insurance information for** [Property Address]

Dear [Borrower's Name]:

Because we did not have evidence that you had [hazard] [Insurance Type] insurance on the property listed above, we bought insurance on your property and added the cost to your mortgage loan account.

The policy that we bought [expired] [is scheduled to expire]. **Because [hazard][Insurance Type] insurance] is required on your property, we intend to maintain insurance on your property by renewing or replacing the insurance we bought.**

The insurance we buy:

- **[Costs $[premium charge]] [Will cost an estimated $[premium charge]] annually, which may be more expensive than insurance you can buy yourself.**
- **May not provide as much coverage as an insurance policy you buy yourself.**

If you buy [hazard] [Insurance Type] insurance, you should immediately provide us with your insurance information.

[Describe the insurance information the borrower must provide]. [The information must be provided in writing.]

If you have any questions, please contact us at [telephone number].

[If applicable, provide a statement advising a borrower to review additional information provided in the same transmittal.]

Regulatory Commentary for Appendix MS-4

1. Model MS-4(A). These model clauses illustrate how a servicer may provide its contact information, how a servicer may request that the borrower contact the servicer, and how the servicer may inform the borrower how to obtain additional information about loss mitigation options, as required by § 1024.39(b)(2)(i), (ii), and (iv).

2. Model MS-4(B). These model clauses illustrate how the servicer may inform the borrower of loss mitigation options that may be available, as required by § 1024.39(b)(2)(iii), if applicable. A servicer may include clauses describing particular loss mitigation options to the extent such options are available. Model MS-4(B) does not contain sample clauses for all loss mitigation options that may be available. The language in the model clauses contained in square brackets is optional; a servicer may comply with the disclosure requirements of § 1024.39(b)(2)(iii) by using language substantially similar to the language in the model clauses, providing additional detail about the options, or by adding or substituting applicable loss mitigation options for options not represented in these model clauses, provided the information disclosed is accurate and clear and conspicuous.48

3. Model MS-4(C). These model clauses illustrate how a servicer may provide contact information for housing counselors, as required by § 1024.39(b)(2)(v). A servicer may, at its option, provide the website and telephone number for either the Bureau's or the Department of Housing and Urban Development's housing counselors list, as provided by paragraphs § 1024.39(b)(2)(v).

MS-4(A)—Statement Encouraging the Borrower to Contact the Servicer and Additional Information About Loss Mitigation Options (§ 1024.39(b)(2)(i), (ii) and (iv))

Call us today to learn more about your options and instructions for how to apply. [The longer you wait, or the further you fall behind on your payments, the harder it will be to find a solution.]

[Servicer Name]

[Servicer Address]

[Servicer Telephone Number]

[For more information, visit [Servicer Website] [and][or] [Email Address]].

MS-4(B)—Available Loss Mitigation Options (§ 1024.39(b)(2)(iii))

[If you need help, the following options may be possible (most are subject to lender approval):]

- [Refinance your loan with us or another lender;]
- [Modify your loan terms with us;]
- [Payment forbearance temporarily gives you more time to pay your monthly payment;] [or]

- [If you are not able to continue paying your mortgage, your best option may be to find more affordable housing. As an alternative to foreclosure, you may be able to sell your home and use the proceeds to pay off your current loan.]

MS-4(C)—Housing Counselors (§ 1024.39(b)(2)(v))

For help exploring your options, the Federal government provides contact information for housing counselors, which you can access by contacting [the Consumer Financial Protection Bureau at [Bureau Housing Counselor List Website]] [the Department of Housing and Urban Development at [HUD Housing Counselor List Website]] or by calling [HUD Housing Counselor List Telephone Number].

Current appendix MS-1 to part 1024 contains a model form that a servicer could use in connection with providing a loan applicant, at the time of application, information about whether servicing of the loan such applicant is applying may be assigned, sold, or transferred at any time while the loan is outstanding.

Escrow

Section 29: Escrow Accounts [12 C.F.R. § 1024.17]

Synopsis

This section of the regulation describes the requirements for an escrow account established by a lender in connection with a federally related mortgage loan. It establishes limits for escrow accounts by using calculations based on monthly payments and disbursements within a calendar year. If the escrow account involves biweekly or any other payment period, the requirements of this section must be modified accordingly.

A series of HUD Public Guidance Documents (found at http://www.hud.gov/offices/hsg/ramh/res/respagui.cfm) provides examples of biweekly accounting, among other examples related to the proper disclosure of escrow accounts under a variety of circumstances.

Definitions

This section has its own set of definitions that are included below in the regulatory text.

Limits on Payments and Acceptable Methods to Determine Limits

A servicer may not require a borrower to deposit into any escrow account, created in connection with a federally related mortgage loan, more than the following amounts:

At the time a servicer creates an escrow account for a borrower:

- The servicer may charge the borrower an amount sufficient to pay the charges respecting the mortgaged property, such as taxes and insurance, which are attributable to the period from the date such payments were last paid until the initial payment date.
- A servicer may also charge the borrower a cushion no greater than one-sixth (1/6) of the estimated total annual payments from the escrow account.

Throughout the life of an escrow account:

- A servicer may charge the borrower a monthly sum equal to one-twelfth (1/12) of the total annual escrow payments which the servicer reasonably anticipates paying from the account.
- A servicer may add an amount, to maintain the permissible cushion, no greater than one-sixth (1/6) of the estimated total annual payments from the account.
- However, if a servicer determines through an escrow account analysis that there is a shortage or deficiency, the servicer may require the borrower to pay additional deposits to make up the shortage or eliminate the deficiency.

Escrow Analysis at Creation of Escrow Account

Before establishing an escrow account, a servicer must conduct an escrow account analysis to determine the amount the borrower must deposit into the escrow account and the amounts of the borrower's periodic payments into the escrow account. When conducting the initial escrow account analysis, a servicer must estimate the disbursement amounts. The servicer must use a date on or before the earlier of the deadline to take advantage of discounts, if available, or the deadline to avoid a penalty as the disbursement date for the escrow item.

Upon completing the initial escrow account analysis, a servicer must prepare and deliver an initial escrow account statement to the borrower. A servicer must use the escrow account analysis to determine whether a surplus, shortage, or deficiency exists since settlement and may make any adjustments to the account accordingly.

Subsequent Escrow Account Analysis

For each escrow account, a servicer must conduct an escrow account analysis at the completion of the escrow account computation year to determine the borrower's monthly escrow account payments for the next computation year, following the same guidelines as discussed above for escrow analysis before the creation of an escrow account.

Acceptable Accounting Method for Determining Escrow Limits

A servicer must use aggregate accounting to conduct an escrow account analysis. In conducting the escrow account analysis, a servicer must use "month-end" accounting.

Cushion

The cushion may not be greater than one-sixth (1/6) of the estimated total annual disbursements from the escrow account using aggregate-analysis accounting.

Servicer Estimates of Disbursement Accounts

A servicer must estimate the amount of escrow account items to be disbursed.

- If a servicer knows the exact charge for an escrow item in the next computation year, then that amount must be used in estimating disbursement amounts.
- If the charge is unknown, a servicer may base estimates on the previous year's charge, or on the previous year's charge as modified by an amount that does not exceed the most recent year's change in the national Consumer Price Index for all urban consumers (CPI, all items).
- In cases of unassessed new construction, a servicer may base estimates on the assessment of comparable residential property in the market area.

Provision in Mortgage Documents

If the mortgage loan documents provide for lower cushion limits or less pre-accrual than the regulation, the limitations of the loan documents will apply. When the terms of the mortgage loan documents allow for greater payments to an escrow account than permitted by regulation, the regulation will control the applicable limitations.

When the mortgage loan documents do not specifically establish an escrow account, state law will determine whether a servicer may establish an escrow account for the loan.

If the mortgage loan documents are silent on escrow account limits (for cushion or pre-accrual) and a servicer establishes an account under state law, the limitations of the regulation apply unless state law provides for a lower amount.

If the mortgage loan documents provide for escrow accounts up to the RESPA limits, a servicer may require the maximum amounts allowable by the regulation subject to the limitations of state law.

Assessments for Periods Longer Than One Year

Some escrow account items may be billed for periods that are longer than one year. For example, a servicer may need to collect flood insurance or water purification escrow funds for payment every three years. In these cases, a servicer must estimate the borrower's payments for a full cycle of disbursements. For a flood insurance premium payable every three years, a servicer must collect the payments reflecting 36 equal monthly amounts. For two out of the three years, the account balance may not reach its low monthly balance because the low point will be on a three-year cycle rather than an annual one. The annual escrow account statement will explain this situation.

Methods of Escrow Account Analysis

The following steps must be followed by a servicer to determine whether the use of an acceptable accounting method conforms with the limitations of the regulation. These steps derive maximum limits. A servicer may use accounting procedures that result in lower target balances and may use a cushion that is lower than the permissible cushion or no cushion at all.

Aggregate analysis. The target balances must not exceed the balances computed according to the following arithmetic operations:

- The servicer first projects a trial balance for the account as a whole over the next computation year (a trial running balance). The servicer assumes it will make estimated disbursements on or before the earlier of the deadline to take advantage of discounts, if available, or the deadline to avoid a penalty. The servicer does not use pre-accrual on these disbursement dates and also assumes the borrower will make monthly payments equal to one-twelfth (1/12) of the estimated total annual escrow account disbursements.

- The servicer then examines the monthly trial balance and adds to the first monthly balance an amount just sufficient to bring the lowest monthly trial balance to zero and adjusts all other monthly balances accordingly.

- The servicer then adds to the monthly balances the permissible cushion. The cushion is two months of the borrower's escrow payments to the servicer or a lesser amount specified by state law or the mortgage loan documents (net of any increases or decreases because of prior year shortages or surpluses, respectively).

- Under the aggregate-analysis method, the lowest monthly target balance for the account must be less than or equal to one-sixth (1/6) of the estimated total annual escrow account disbursements or a lesser amount specified by state law or the mortgage loan documents. The target balances derived by the servicer, using these steps, will yield the maximum limit for the escrow account.

Single-item analysis. Lenders may use single-item accounting only for computing the individual escrow deposits (e.g., taxes, insurance, etc.) that will be disclosed on the HUD-1 or HUD-1A settlement statement.

- The servicer first projects a trial balance for each item over the next computation year (a trial running balance). The servicer assumes it will make estimated disbursements on or before the earlier of the deadline to take advantage of discounts, if available, or the deadline to avoid a penalty. The servicer does not use pre-accrual on these disbursement dates and assumes the borrower will make periodic payments equal to one-twelfth (1/12) of the estimated total annual escrow account disbursements.

- The servicer then examines the monthly trial balance for each escrow account item and adds to the first monthly balance for each separate item an amount just sufficient to bring the lowest monthly trial balance for that item to zero and then adjusts all other monthly balances accordingly.

- The servicer then adds the permissible cushion, if any, to the monthly balance for the separate escrow account item. The permissible cushion is two months' escrow payments for the escrow account item (net of any increases or decreases because of prior year shortages or surpluses, respectively) or a lesser amount specified by state law or the mortgage loan documents.

- The servicer then examines the balances for each item to be sure that the lowest monthly balance for that item is less than or equal to one-sixth (1/6) of the estimated total annual escrow account disbursements or a lesser amount specified by state law or the mortgage loan documents.

- The lender must compute an adjustment based on aggregate accounting, and disclose the adjustment on the settlement statement. This adjustment equals the difference between the deposit required under aggregate accounting and the sum of deposits required under single-item accounting.

Transfer of Servicing

If a new servicer changes either the monthly payment amount or the accounting method used by the previous servicer, then the new servicer must provide the borrower with an initial escrow account statement within 60 days of the date of servicing transfer.

When a new servicer is required to provide an initial escrow account statement upon the transfer of servicing, the new servicer must use the effective date of the transfer of servicing to establish the new escrow account computation year.

When a new servicer retains the monthly payments and accounting methods of the previous servicer, the new servicer may continue to use the escrow account computation year established by the previous servicer or may choose to establish a different computation year using a short-year statement. At the end of the escrow account computation year or any short year, a new servicer must perform an escrow analysis and provide the borrower with an annual escrow account statement.

Initial Escrow Account Statement

Timing if Escrow Established at Settlement

After conducting the escrow account analysis for each escrow account, a servicer must submit an initial escrow account statement to the borrower, either at settlement or within 45 calendar days of settlement, for all escrow accounts that are established as a condition of the loan. The initial escrow account statement must include:

- The amount of the borrower's monthly mortgage payment;
- The portion of the monthly payment that will be placed in the escrow account;
- An itemization of the estimated taxes, insurance premiums, and other charges that the servicer reasonably anticipates will be paid from the escrow account during the escrow account computation year and the anticipated disbursement dates of those charges;
- A statement specifying the amount selected as a cushion; and
- A trial running balance for the account.

A servicer may incorporate the initial escrow account statement into the HUD-1 or HUD-1A Settlement Statement or provide it to the borrower as a separate document.

Timing if Escrow Account Established After Settlement

For escrow accounts established after settlement (and which are not a condition of the loan), a servicer must submit an initial escrow account statement to a borrower within 45 calendar days of the date of the establishment of the escrow account.

Format for Initial Escrow Account Statement

Incorporation of Initial Escrow Account Statement into HUD-1 or HUD-1A Settlement Statement

If a servicer wishes to add the initial escrow account statement to the HUD-1 or HUD-1A Settlement Statement, it may do so by incorporating it into the basic text of the HUD-1 or HUD-1A Settlement Statement or by attaching it as an additional page.

Identification of Payees

The initial escrow account statement does not need to identify a specific payee by name if it provides sufficient information to identify the use of the funds. Appropriate entries might include county taxes, hazard insurance, condominium dues, etc.

If a particular payee (e.g., a taxing body) receives more than one payment during the escrow account computation year, the statement must indicate each payment and disbursement date. If there are several taxing authorities or insurers, the statement must identify each taxing body or insurer (e.g., "city taxes," "school taxes," "hazard insurance," or "flood insurance," etc.).

Discretionary Payments

Any borrower's discretionary payment (such as credit life or disability insurance) made as part of a monthly mortgage payment is to be noted on the initial and annual statements. If a discretionary payment is established or terminated during the escrow account computation year, this change should be noted on the next annual statement.

A discretionary payment is not part of the escrow account unless the payment is required by the lender, in accordance with the definition of "settlement service" in section 1024.2 or the servicer chooses to place the discretionary payment in the escrow account.

If a servicer has not established an escrow account for a federally related mortgage loan and only receives payments for discretionary items, this section is not applicable.

Regulatory Text–Escrow Accounts [12 CFR § 1024.17*]*

(*a) **General**. This section sets out the requirements for an escrow account that a lender establishes in connection with a federally related mortgage loan. It sets limits for escrow accounts using calculations based on monthly payments and disbursements within a calendar year. If an escrow account involves biweekly or any other payment period, the requirements in this section shall be modified accordingly. A Public Guidance Document entitled "Biweekly Payments—Example" provides examples of biweekly accounting and a Public Guidance Document entitled "Annual Escrow Account Disclosure Statement—Example" provides examples of a 3-year accounting cycle that may be used in accordance with paragraph (c)(9) of this section. A Public Guidance Document entitled "Consumer Disclosure for Voluntary Escrow Account Payments" provides a model disclosure format that originators and servicers are encouraged, but not required, to provide to consumers when the originator or servicer anticipates a substantial increase in disbursements from the escrow account after the first year of the loan. The disclosures in that model format may be combined with or included in the Initial Escrow Account Statement required in §1024.17(g).*

***(b) Definitions.** As used in this section:*

> ***Aggregate (or) composite analysis**, hereafter called aggregate analysis, means an accounting method a servicer uses in conducting an escrow account analysis by computing the sufficiency of escrow account funds by analyzing the account as a whole. Appendix E to this part sets forth examples of aggregate escrow account analyses.*

Annual escrow account statement *means a statement containing all of the information set forth in §1024.17(i). As noted in §1024.17(i), a servicer shall submit an annual escrow account statement to the borrower within 30 calendar days of the end of the escrow account computation year, after conducting an escrow account analysis.*

Cushion or reserve *(hereafter cushion) means funds that a servicer may require a borrower to pay into an escrow account to cover unanticipated disbursements or disbursements made before the borrower's payments are available in the account, as limited by §1024.17(c).*

Deficiency *is the amount of a negative balance in an escrow account. As noted in §1024.17(f), if a servicer advances funds for a borrower, then the servicer must perform an escrow account analysis before seeking repayment of the deficiency.*

Delivery *means the placing of a document in the United States mail, first-class postage paid, addressed to the last known address of the recipient. Hand delivery also constitutes delivery.*

Disbursement *date means the date on which the servicer actually pays an escrow item from the escrow account.*

Escrow account *means any account that a servicer establishes or controls on behalf of a borrower to pay taxes, insurance premiums (including flood insurance), or other charges with respect to a federally related mortgage loan, including charges that the borrower and servicer have voluntarily agreed that the servicer should collect and pay. The definition encompasses any account established for this purpose, including a "trust account", "reserve account", "impound account", or other term in different localities. An "escrow account" includes any arrangement where the servicer adds a portion of the borrower's payments to principal and subsequently deducts from principal the disbursements for escrow account items. For purposes of this section, the term "escrow account" excludes any account that is under the borrower's total control.*

Escrow account analysis *means the accounting that a servicer conducts in the form of a trial running balance for an escrow account to:*

(1) Determine the appropriate target balances;

(2) Compute the borrower's monthly payments for the next escrow account computation year and any deposits needed to establish or maintain the account; and

(3) Determine whether shortages, surpluses or deficiencies exist.

Escrow account computation year *is a 12-month period that a servicer establishes for the escrow account beginning with the borrower's initial payment date. The term includes each 12-month period thereafter, unless a servicer chooses to issue a short year statement under the conditions stated in §1024.17(i)(4).*

Escrow account item *or* ***separate item*** *means any separate expenditure category, such as "taxes" or "insurance", for which funds are collected in the escrow account for disbursement. An escrow account item with installment payments, such as local property taxes, remains one escrow account item regardless of multiple disbursement dates to the tax authority.*

Initial escrow account statement *means the first disclosure statement that the servicer delivers to the borrower concerning the borrower's escrow account. The initial escrow account statement shall meet the requirements of §1024.17(g) and be in substantially the format set forth in §1024.17(h).*

Installment payment *means one of two or more payments payable on an escrow account item during an escrow account computation year. An example of an installment payment is where a jurisdiction bills quarterly for taxes.*

Payment due date *means the date each month when the borrower's monthly payment to an escrow account is due to the servicer. The initial payment date is the borrower's first payment due date to an escrow account.*

Penalty *means a late charge imposed by the payee for paying after the disbursement is due. It does not include any additional charge or fee imposed by the payee associated with choosing installment payments as opposed to annual payments or for choosing one installment plan over another.*

Pre-accrual *is a practice some servicers use to require borrowers to deposit funds, needed for disbursement and maintenance of a cushion, in the escrow account some period before the disbursement date. Pre-accrual is subject to the limitations of §1024.17(c).*

Shortage *means an amount by which a current escrow account balance falls short of the target balance at the time of escrow analysis.*

Single-item analysis *means an accounting method servicers use in conducting an escrow account analysis by computing the sufficiency of escrow account funds by considering each escrow item separately. Appendix E to this part sets forth examples of single-item analysis.*

Submission *(of an escrow account statement) means the delivery of the statement.*

Surplus *means an amount by which the current escrow account balance exceeds the target balance for the account.*

System of recordkeeping *means the servicer's method of keeping information that reflects the facts relating to that servicer's handling of the borrower's escrow account, including, but not limited to, the payment of amounts from the escrow account and the submission of initial and annual escrow account statements to borrowers.*

Target balance *means the estimated month end balance in an escrow account that is just sufficient to cover the remaining disbursements from the escrow account in the escrow account computation year, taking into account the remaining scheduled periodic payments, and a cushion, if any.*

Trial running balance *means the accounting process that derives the target balances over the course of an escrow account computation year. Section 1024.17(d) provides a description of the steps involved in performing a trial running balance.*

(c) ***Limits on payments to escrow accounts.***

(1) A lender or servicer (hereafter servicer) shall not require a borrower to deposit into any escrow account, created in connection with a federally related mortgage loan, more than the following amounts:

(i) ***Charges at settlement or upon creation of an escrow account****. At the time a servicer creates an escrow account for a borrower, the servicer may charge the borrower an amount sufficient to pay the charges respecting the mortgaged property, such as taxes and insurance, which are attributable to the period from the date such payment(s) were last paid until the initial payment date. The "amount sufficient to pay" is computed so that the lowest month end target balance projected for the escrow account computation year is zero (-0-) (see Step 2 in Appendix E to this part). In addition, the servicer may charge the borrower a cushion that shall be no greater than one-sixth (⅙) of the estimated total annual payments from the escrow account.*

(ii) ***Charges during the life of the escrow account****. Throughout the life of an escrow account, the servicer may charge the borrower a monthly sum equal to one-twelfth (1/12) of the total annual escrow payments which the servicer reasonably anticipates paying from the account. In addition, the servicer may add an amount to maintain a cushion no greater than one-sixth (⅙) of the estimated total annual payments from the account. However, if a servicer determines through an escrow account analysis that there is a shortage or deficiency, the servicer may require the borrower to pay additional deposits to make up the shortage or eliminate the deficiency, subject to the limitations set forth in §1024.17(f).*

(2) ***Escrow analysis at creation of escrow account****. Before establishing an escrow account, the servicer must conduct an escrow account analysis to determine the amount the borrower must deposit into the escrow account (subject to the limitations of paragraph (c)(1)(i) of this section), and the amount of the borrower's periodic payments into the escrow account (subject to the limitations of paragraph (c)(1)(ii) of this section). In conducting the escrow account analysis, the servicer must estimate the disbursement amounts according to paragraph (c)(7) of this section. Pursuant to paragraph (k) of this section, the servicer must use a date on or before the deadline to avoid a penalty as the disbursement date for the escrow item and comply with any other requirements of paragraph (k) of this section. Upon completing the initial escrow account analysis, the servicer must prepare and deliver an initial escrow account statement to the borrower, as set forth in paragraph (g) of this section. The servicer must use the escrow account analysis to determine whether a surplus, shortage, or deficiency exists and must make any adjustments to the account pursuant to paragraph (f) of this section.*

(3) ***Subsequent escrow account analyses****. For each escrow account, the servicer must conduct an escrow account analysis at the completion of the escrow account computation year to determine the borrower's monthly escrow account payments for the next computation year, subject to the limitations of paragraph (c)(1)(ii) of this section. In conducting the escrow account analysis, the servicer must estimate the disbursement amounts according to paragraph (c)(7) of this section. Pursuant to paragraph (k) of this section, the servicer must use a date on or before the deadline to avoid a penalty as the disbursement date for the escrow item and comply with any other requirements of paragraph (k) of this section. The servicer must use the escrow account analysis to determine whether a surplus, shortage, or deficiency exists, and must make any adjustments to the account pursuant to paragraph (f) of this section. Upon completing an escrow account analysis, the servicer must prepare and submit an annual escrow account statement to the borrower, as set forth in paragraph (i) of this section.*

(4) ***Aggregate accounting required****. All servicers must use the aggregate accounting method in conducting escrow account analyses.*

(5) ***Cushion.*** *The cushion must be no greater than one-sixth (⅙) of the estimated total annual disbursements from the escrow account.*

(6) ***Restrictions on pre-accrual****. A servicer must not practice pre-accrual.*

(7) ***Servicer estimates of disbursement amounts****. To conduct an escrow account analysis, the servicer shall estimate the amount of escrow account items to be disbursed. If the servicer knows the charge for an escrow item in the next computation year, then the servicer shall use that amount in estimating disbursement amounts. If the charge is unknown to the servicer, the servicer may base the estimate on the preceding year's charge, or the preceding year's charge as modified by an amount not exceeding the most recent year's change in the national Consumer Price Index for all urban consumers (CPI, all items). In cases of unassessed new construction, the servicer may base an estimate on the assessment of comparable residential property in the market area.*

(8) ***Provisions in federally related mortgage documents****. The servicer must examine the federally related mortgage loan documents to determine the applicable cushion for each escrow account. If any such documents provide for lower cushion limits, then the terms of the loan documents apply. Where the terms of any such documents allow greater payments to an escrow account than allowed by this section, then this section controls the applicable limits. Where such documents do not specifically establish an escrow account, whether a servicer may establish an escrow account for the loan is a matter for determination by other Federal or State law. If such documents are silent on the escrow account limits and a servicer establishes an escrow account under other Federal or State law, then the limitations of this section apply unless applicable Federal or State law provides for a lower amount. If such documents provide for escrow accounts up to the RESPA limits, then the servicer may require the maximum amounts consistent with this section, unless an applicable Federal or State law sets a lesser amount.*

(9) ***Assessments for periods longer than one year****. Some escrow account items may be billed for periods longer than one year. For example, servicers may need to collect flood insurance or water purification escrow funds for payment every three years. In such cases, the servicer shall estimate the borrower's payments for a full cycle of disbursements. For a flood insurance premium payable every 3 years, the servicer shall collect the payments reflecting 36 equal monthly amounts. For two out of the three years, however, the account balance may not reach its low monthly balance because the low point will be on a three-year cycle, as compared to an annual one. The annual escrow account statement shall explain this situation (see example in the Public Guidance Document entitled "Annual Escrow Account Disclosure Statement—Example", available in accordance with §1024.3).*

(d) ***Methods of escrow account analysis****.*

(1) The following sets forth the steps servicers must use to determine whether their use of aggregate analysis conforms with the limitations in §1024.17(c)(1). The steps set forth in this section result in maximum limits. Servicers may use accounting procedures that result in lower target balances. In particular, servicers may use a cushion less than the permissible cushion or no cushion at all. This section does not require the use of a cushion.

(2) ***Aggregate analysis****.*

(i) In conducting the escrow account analysis using aggregate analysis, the target balances may not exceed the balances computed according to the following arithmetic operations:

(A) The servicer first projects a trial balance for the account as a whole over the next computation year (a trial running balance). In doing so the servicer assumes that it will make estimated disbursements on or before the earlier of the deadline to take advantage of discounts, if available, or the deadline to avoid a penalty. The servicer does not use pre-accrual on these disbursement dates. The servicer also assumes that the borrower will make monthly payments equal to one-twelfth of the estimated total annual escrow account disbursements.

(B) The servicer then examines the monthly trial balances and adds to the first monthly balance an amount just sufficient to bring the lowest monthly trial balance to zero, and adjusts all other monthly balances accordingly.

(C) The servicer then adds to the monthly balances the permissible cushion. The cushion is two months of the borrower's escrow payments to the servicer or a lesser amount specified by state law or the mortgage document (net of any increases or decreases because of prior year shortages or surpluses, respectively).

(ii) ***Lowest monthly balance****. Under aggregate analysis, the lowest monthly target balance for the account shall be less than or equal to one-sixth of the estimated total annual escrow account disbursements or a lesser amount specified by state law or the mortgage document. The target balances that the servicer derives using these steps yield the maximum limit for the escrow account. Appendix E to this part illustrates these steps.*

(e) ***Transfer of servicing****.*

(1) If the new servicer changes either the monthly payment amount or the accounting method used by the transferor (old) servicer, then the new servicer shall provide the borrower with an initial escrow account statement within 60 days of the date of servicing transfer.

(i) Where a new servicer provides an initial escrow account statement upon the transfer of servicing, the new servicer shall use the effective date of the transfer of servicing to establish the new escrow account computation year.

(ii) Where the new servicer retains the monthly payments and accounting method used by the transferor servicer, then the new servicer may continue to use the escrow account computation year established by the transferor servicer or may choose to establish a different computation year using a short-year statement. At the completion of the escrow account computation year or any short year, the new servicer shall perform an escrow analysis and provide the borrower with an annual escrow account statement.

(2) The new servicer shall treat shortages, surpluses and deficiencies in the transferred escrow account according to the procedures set forth in §1024.17(f).

(f) ***Shortages, surpluses, and deficiencies requirements****—*

(1) ***Escrow account analysis.*** *For each escrow account, the servicer shall conduct an escrow account analysis to determine whether a surplus, shortage or deficiency exists.*

(i) As noted in §1024.17(c)(2) and (3), the servicer shall conduct an escrow account analysis upon establishing an escrow account and at completion of the escrow account computation year.

(ii) The servicer may conduct an escrow account analysis at other times during the escrow computation year. If a servicer advances funds in paying a disbursement, which is not the result of a borrower's payment default under the underlying mortgage document, then the servicer shall conduct an escrow account analysis to determine the extent of the deficiency before seeking repayment of the funds from the borrower under this paragraph (f).

(2) ***Surpluses.***

(i) If an escrow account analysis discloses a surplus, the servicer shall, within 30 days from the date of the analysis, refund the surplus to the borrower if the surplus is greater than or equal to 50 dollars ($50). If the surplus is less than 50 dollars ($50), the servicer may refund such amount to the borrower, or credit such amount against the next year's escrow payments.

(ii) These provisions regarding surpluses apply if the borrower is current at the time of the escrow account analysis. A borrower is current if the servicer receives the borrower's payments within 30 days of the payment due date. If the servicer does not receive the borrower's payment within 30 days of the payment due date, then the servicer may retain the surplus in the escrow account pursuant to the terms of the federally related mortgage loan documents.

(iii) After an initial or annual escrow analysis has been performed, the servicer and the borrower may enter into a voluntary agreement for the forthcoming escrow accounting year for the borrower to deposit funds into the escrow account for that year greater than the limits established under paragraph (c) of this section. Such an agreement shall cover only one escrow accounting year, but a new voluntary agreement may be entered into after the next escrow analysis is performed. The voluntary agreement may not alter how surpluses are to be treated when the next escrow analysis is performed at the end of the escrow accounting year covered by the voluntary agreement.

(3) ***Shortages.***

(i) If an escrow account analysis discloses a shortage of less than one month's escrow account payment, then the servicer has three possible courses of action:

(A) The servicer may allow a shortage to exist and do nothing to change it;

(B) The servicer may require the borrower to repay the shortage amount within 30 days; or

(C) The servicer may require the borrower to repay the shortage amount in equal monthly payments over at least a 12-month period.

(ii) If an escrow account analysis discloses a shortage that is greater than or equal to one month's escrow account payment, then the servicer has two possible courses of action:

(A) The servicer may allow a shortage to exist and do nothing to change it; or

(B) The servicer may require the borrower to repay the shortage in equal monthly payments over at least a 12-month period.

(4) Deficiency. *If the escrow account analysis confirms a deficiency, then the servicer may require the borrower to pay additional monthly deposits to the account to eliminate the deficiency.*

(i) If the deficiency is less than one month's escrow account payment, then the servicer:

(A) May allow the deficiency to exist and do nothing to change it;

(B) May require the borrower to repay the deficiency within 30 days; or

(C) May require the borrower to repay the deficiency in 2 or more equal monthly payments.

(ii) If the deficiency is greater than or equal to 1 month's escrow payment, the servicer may allow the deficiency to exist and do nothing to change it or may require the borrower to repay the deficiency in two or more equal monthly payments.

(iii) These provisions regarding deficiencies apply if the borrower is current at the time of the escrow account analysis. A borrower is current if the servicer receives the borrower's payments within 30 days of the payment due date. If the servicer does not receive the borrower's payment within 30 days of the payment due date, then the servicer may recover the deficiency pursuant to the terms of the federally related mortgage loan documents.

(5) ***Notice of shortage or deficiency in escrow account.*** *The servicer shall notify the borrower at least once during the escrow account computation year if there is a shortage or deficiency in the escrow account. The notice may be part of the annual escrow account statement or it may be a separate document.*

(g) ***Initial escrow account statement.***

(1) Submission at settlement, or within 45 calendar days of settlement. As noted in §1024.17(c)(2), the servicer shall conduct an escrow account analysis before establishing an escrow account to determine the amount the borrower shall deposit into the escrow account, subject to the limitations of §1024.17(c)(1)(i). After conducting the escrow account analysis for each escrow account, the servicer shall submit an initial escrow account statement to the borrower at settlement or within 45 calendar days of settlement for escrow accounts that are established as a condition of the loan.

(i) The initial escrow account statement shall include the amount of the borrower's monthly mortgage payment and the portion of the monthly payment going into the escrow account and shall itemize the estimated taxes, insurance premiums, and other charges that the servicer reasonably anticipates to be paid from the escrow account during the escrow account

computation year and the anticipated disbursement dates of those charges. The initial escrow account statement shall indicate the amount that the servicer selects as a cushion. The statement shall include a trial running balance for the account.

(ii) Pursuant to §1024.17(h)(2), the servicer may incorporate the initial escrow account statement into the HUD-1 or HUD-1A settlement statement. If the servicer does not incorporate the initial escrow account statement into the HUD-1 or HUD-1A settlement statement, then the servicer shall submit the initial escrow account statement to the borrower as a separate document.

(2) ***Time of submission of initial escrow account statement for an escrow account established after settlement.*** *For escrow accounts established after settlement (and which are not a condition of the loan), a servicer shall submit an initial escrow account statement to a borrower within 45 calendar days of the date of establishment of the escrow account.*

(h) ***Format for initial escrow account statement****.*

(1) The format and a completed example for an initial escrow account statement are set out in Public Guidance Documents entitled "Initial Escrow Account Disclosure Statement—Format" and "Initial Escrow Account Disclosure Statement—Example", available in accordance with §1024.3.

(2) ***Incorporation of initial escrow account statement into HUD-1 or HUD-1A settlement statement.*** *Pursuant to §1024.9(a)(11), a servicer may add the initial escrow account statement to the HUD-1 or HUD-1A settlement statement. The servicer may include the initial escrow account statement in the basic text or may attach the initial escrow account statement as an additional page to the HUD-1 or HUD-1A settlement statement.*

(3) ***Identification of payees.*** *The initial escrow account statement need not identify a specific payee by name if it provides sufficient information to identify the use of the funds. For example, appropriate entries include: county taxes, hazard insurance, condominium dues, etc. If a particular payee, such as a taxing body, receives more than one payment during the escrow account computation year, the statement shall indicate each payment and disbursement date. If there are several taxing authorities or insurers, the statement shall identify each taxing body or insurer (e.g., "City Taxes", "School Taxes", "Hazard Insurance", or "Flood Insurance," etc.).*

(i) ***Annual escrow account statements****. For each escrow account, a servicer shall submit an annual escrow account statement to the borrower within 30 days of the completion of the escrow account computation year. The servicer shall also submit to the borrower the previous year's projection or initial escrow account statement. The servicer shall conduct an escrow account analysis before submitting an annual escrow account statement to the borrower.*

(1) ***Contents of annual escrow account statement.*** *The annual escrow account statement shall provide an account history, reflecting the activity in the escrow account during the escrow account computation year, and a projection of the activity in the account for the next year. In preparing the statement, the servicer may assume scheduled payments and disbursements will be made for the final 2 months of the escrow account computation year. The annual escrow account statement must include, at a minimum, the following (the items in paragraphs (i)(1)(i) through (i)(1)(iv) must be clearly itemized):*

(i) The amount of the borrower's current monthly mortgage payment and the portion of the monthly payment going into the escrow account;

(ii) The amount of the past year's monthly mortgage payment and the portion of the monthly payment that went into the escrow account;

(iii) The total amount paid into the escrow account during the past computation year;

(iv) The total amount paid out of the escrow account during the same period for taxes, insurance premiums, and other charges (as separately identified);

(v) The balance in the escrow account at the end of the period;

(vi) An explanation of how any surplus is being handled by the servicer;

(vii) An explanation of how any shortage or deficiency is to be paid by the borrower; and

(viii) If applicable, the reason(s) why the estimated low monthly balance was not reached, as indicated by noting differences between the most recent account history and last year's projection. Public Guidance Documents entitled "Annual Escrow Account Disclosure Statement—Format" and "Annual Escrow Account Disclosure Statement—Example" set forth an acceptable format and methodology for conveying this information.

(2) ***No annual statements in the case of default, foreclosure, or bankruptcy.*** *This paragraph (i)(2) contains an exemption from the provisions of §1024.17(i)(1). If at the time the servicer conducts the escrow account analysis the borrower is more than 30 days overdue, then the servicer is exempt from the requirements of submitting an annual escrow account statement to the borrower under §1024.17(i). This exemption also applies in situations where the servicer has brought an action for foreclosure under the underlying federally related mortgage loan, or where the borrower is in bankruptcy proceedings. If the servicer does not issue an annual statement pursuant to this exemption and the loan subsequently is reinstated or otherwise becomes current, the servicer shall provide a history of the account since the last annual statement (which may be longer than 1 year) within 90 days of the date the account became current.*

(3) ***Delivery with other material.*** *The servicer may deliver the annual escrow account statement to the borrower with other statements or materials, including the Substitute 1098, which is provided for Federal income tax purposes.*

(4) ***Short year statements.*** *A servicer may issue a short year annual escrow account statement ("short year statement") to change one escrow account computation year to another. By using a short year statement a servicer may adjust its production schedule or alter the escrow account computation year for the escrow account.*

(i) ***Effect of short year statement.*** *The short year statement shall end the "escrow account computation year" for the escrow account and establish the beginning date of the new escrow account computation year. The servicer shall deliver the short year statement to the borrower within 60 days from the end of the short year.*

(ii) ***Short year statement upon servicing transfer.*** *Upon the transfer of servicing, the transferor (old) servicer shall submit a short year statement to the borrower within 60 days of the effective date of transfer.*

(iii) ***Short year statement upon loan payoff.*** *If a borrower pays off a federally related mortgage loan during the escrow account computation year, the servicer shall submit a short year statement to the borrower within 60 days after receiving the payoff funds.*

(j) ***Formats for annual escrow account statement****. The formats and completed examples for annual escrow account statements using single-item analysis (pre-rule accounts) and aggregate analysis are set out in Public Guidance Documents entitled "Annual Escrow Account Disclosure Statement—Format" and "Annual Escrow Account Disclosure Statement—Example".*

(k) ***Timely payments****.*

(1) If the terms of any federally related mortgage loan require the borrower to make payments to an escrow account, the servicer must pay the disbursements in a timely manner, that is, on or before the deadline to avoid a penalty, as long as the borrower's payment is not more than 30 days overdue.

(2) The servicer must advance funds to make disbursements in a timely manner as long as the borrower's payment is not more than 30 days overdue. Upon advancing funds to pay a disbursement, the servicer may seek repayment from the borrower for the deficiency pursuant to paragraph (f) of this section.

(3) For the payment of property taxes from the escrow account, if a taxing jurisdiction offers a servicer a choice between annual and installment disbursements, the servicer must also comply with this paragraph (k)(3). If the taxing jurisdiction neither offers a discount for disbursements on a lump sum annual basis nor imposes any additional charge or fee for installment disbursements, the servicer must make disbursements on an installment basis. If, however, the taxing jurisdiction offers a discount for disbursements on a lump sum annual basis or imposes any additional charge or fee for installment disbursements, the servicer may, at the servicer's discretion (but is not required by RESPA to), make lump sum annual disbursements in order to take advantage of the discount for the borrower or avoid the additional charge or fee for installments, as long as such method of disbursement complies with paragraphs (k)(1) and (k)(2) of this section. The Bureau encourages, but does not require, the servicer to follow the preference of the borrower, if such preference is known to the servicer.

(4) Notwithstanding paragraph (k)(3) of this section, a servicer and borrower may mutually agree, on an individual case basis, to a different disbursement basis (installment or annual) or disbursement date for property taxes from that required under paragraph (k)(3) of this section, so long as the agreement meets the requirements of paragraphs (k)(1) and (k)(2) of this section. The borrower must voluntarily agree; neither loan approval nor any term of the loan may be conditioned on the borrower's agreeing to a different disbursement basis or disbursement date.

(5) ***Timely payment of hazard insurance***

(i) ***In general.*** *Except as provided in paragraph (k)(5)(iii) of this section, with respect to a borrower whose mortgage payment is more than 30 days overdue, but who has established an escrow account for the payment for hazard insurance, as defined in §1024.31, a servicer may not purchase force-placed insurance, as that term is defined in §1024.37(a), unless a servicer is unable to disburse funds from the borrower's escrow account to ensure that the borrower's hazard insurance premium charges are paid in a timely manner.*

(ii) ***Inability to disburse funds***

(A) ***When inability exists.*** *A servicer is considered unable to disburse funds from a borrower's escrow account to ensure that the borrower's hazard insurance premiums are paid in a timely manner only if the servicer has a reasonable basis to believe either that the borrower's hazard insurance has been canceled (or was not renewed) for reasons other than nonpayment of premium charges or that the borrower's property is vacant.*

(B) ***When inability does not exist.*** *A servicer shall not be considered unable to disburse funds from the borrower's escrow account because the escrow account contains insufficient funds for paying hazard insurance premium charges.*

(C) ***Recoupment of advances.*** *If a servicer advances funds to an escrow account to ensure that the borrower's hazard insurance premium charges are paid in a timely manner, a servicer may seek repayment from the borrower for the funds the servicer advanced, unless otherwise prohibited by applicable law.*

(iii) ***Small servicers.*** *Notwithstanding paragraphs (k)(5)(i) and (k)(5)(ii)(B) of this section and subject to the requirements in §1024.37, a servicer that qualifies as a small servicer pursuant to 12 CFR 1026.41(e)(4) may purchase force-placed insurance and charge the cost of that insurance to the borrower if the cost to the borrower of the force-placed insurance is less than the amount the small servicer would need to disburse from the borrower's escrow account to ensure that the borrower's hazard insurance premium charges were paid in a timely manner.*

(l) ***Discretionary payments.*** *Any borrower's discretionary payment (such as credit life or disability insurance) made as part of a monthly mortgage payment is to be noted on the initial and annual statements. If a discretionary payment is established or terminated during the escrow account computation year, this change should be noted on the next annual statement. A discretionary payment is not part of the escrow account unless the payment is required by the lender, in accordance with the definition of "settlement service" in §1024.2, or the servicer chooses to place the discretionary payment in the escrow account. If a servicer has not established an escrow account for a federally related mortgage loan and only receives payments for discretionary items, this section is not applicable.*

Regulatory Commentary – Escrow [12 CFR § 1024.17]

When inability exists. 17(k)(5)(ii)(A)

1. Examples of reasonable basis to believe that a policy has been cancelled or not renewed. The following are examples of where a servicer has a reasonable basis to believe that a borrower's hazard insurance policy has been canceled or not renewed for reasons other than the nonpayment of premium charges:

i. A borrower notifies a servicer that the borrower has cancelled the hazard insurance coverage, and the servicer has not received notification of other hazard insurance coverage.

ii. A servicer receives a notification of cancellation or non-renewal from the borrower's insurance company before payment is due on the borrower's hazard insurance.

iii. A servicer does not receive a payment notice by the expiration date of the borrower's hazard insurance policy.

17(k)(5)(ii)(C) Recoupment for advances.

1. Month-to-month advances. A servicer that advances the premium payment to be disbursed from an escrow account may advance the payment on a month-to-month basis, if permitted by State or other applicable law and accepted by the borrower's hazard insurance company.

Appendix E – Arithmetic Steps

I. Example Illustrating Aggregate Analysis

ASSUMPTIONS:

Disbursements:

$360 for school taxes disbursed on September 20

$1,200 for county property taxes:

$500 disbursed on July 25

$700 disbursed on December 10

Cushion: One sixth of estimated annual disbursements

Settlement: May 15

First Payment: July 1

Step I – Initial Trial Balance

	Aggregate		
	pmt	disb	bal
Jun	000	000	-000
Jul	130	500	-370
Aug	130	000	-240
Sep	130	360	-470
Oct	130	000	-340
Nov	130	000	-210
Dec	130	700	-780
Jan	130	000	-650
Feb	130	000	-520
Mar	130	000	-390
Apr	130	000	-260
May	130	000	-130
Jun	130	000	-000

Step 2 – Adjusted Trial Balance (Increase monthly balances to eliminate negative balances)

	Aggregate		
	pmt	disb	bal
Jun	000	000	780
Jul	130	500	410
Aug	130	000	540
Sep	130	360	310
Oct	130	000	440
Nov	130	000	570
Dec	130	700	000
Jan	130	000	130
Feb	130	000	260
Mar	130	000	390
Apr	130	000	520
May	130	000	650
Jun	130	000	780

Step 3 - Trial Balance with Cushion

	Aggregate		
	pmt	disb	bal
Jun	000	000	1040
Jul	130	500	0670
Aug	130	000	0800
Sept	130	360	0570
Oct	130	000	0700
Nov	130	000	0830
Dec	130	700	0260
Jan	130	000	0390
Feb	130	000	0520
Mar	130	000	0650
Apr	130	000	0780
May	130	000	0910
Jun	130	000	1040

Appendix E (continued)

II. Example Illustrating Single-Item Analysis (Used only to compute initial deposit amounts to disclose on settlement statement)

ASSUMPTIONS:

Disbursements:

$360 for school taxes disbursed on September 20

$1,200 for county property taxes:

$500 disbursed on July 25

$700 disbursed on December 10

Cushion: One sixth of estimated annual disbursements

Settlement: May 15

First Payment: July 1

Step 1 – Initial Trial Balance						
	Single-Item					
	Taxes			**School Taxes**		
	pmt	disb	bal	pmt	disb	bal
Jun	0	0	0	0	0	0
Jul	100	500	-400	30	0	30
Aug	100	0	-300	30	0	60
Sep	100	0	-200	30	360	-270
Oct	100	0	-100	30	0	-240
Nov	100	0	0	30	0	-210
Dec	100	700	-600	30	0	-180
Jan	100	0	-500	30	0	-150
Feb	100	0	-400	30	0	-120
Mar	100	0	-300	30	0	-90
Apr	100	0	-200	30	0	-60
May	100	0	-100	30	0	-30
Jun	100	0	0	30	0	0

Appendix E (continued)

Step 2 – Adjusted Trial Balance (Increase monthly balances to eliminate negative balances)						
	Single-Item					
	Taxes			**School Taxes**		
	pmt	disb	bal	pmt	disb	bal
Jun	0	0	600	0	0	270
Jul	100	500	200	30	0	300
Aug	100	0	300	30	0	330
Sep	100	0	400	30	360	0
Oct	100	0	500	30	0	30
Nov	100	000	600	30	000	60
Dec	100	700	0	30	0	90
Jan	100	0	100	30	0	120
Feb	100	0	200	30	0	150
Mar	100	0	300	30	0	180
Apr	100	0	400	30	0	210
May	100	0	500	30	0	240
Jun	100	0	600	30	0	270

Step 3 – Trial Balance with Cushion						
	Single-Item					
	Taxes			**School Taxes**		
	pmt	disb	bal	pmt	disb	bal
Jun	0	0	800	0	0	330
Jul	100	500	400	30	0	360
Aug	100	0	500	30	0	390
Sep	100	0	600	30	360	60
Oct	100	0	700	30	0	90
Nov	100	0	800	30	0	120
Dec	100	700	200	30	0	150
Jan	100	0	300	30	0	180
Feb	100	0	400	30	0	210
Mar	100	0	500	30	0	240
Apr	100	0	600	30	0	270
May	100	0	700	30	0	300
Jun	100	0	800	30	0	330

Section 30: 12 CFR § 1024.34
Timely Escrow Payments and Treatment of Escrow Account Balances

Introduction

This new section creates little in the way of additional requirements. It was moved from an earlier section of the regulation to this location. Any other changes are discussed below.

Timely Escrow Disbursements Required [12 CFR § 1024.34(a)]

RESPA provides that the servicer make payments from the escrow account for taxes, insurance premiums, and other charges in a timely manner as such payments become due. The CFPB proposed to incorporate the substance of the current regulatory text into this new section. No substantive changes were made.

Regulatory Text - Timely Escrow Payments and Treatment of Escrow Account Balances - 12 CFR § 1024.34(a)

§ 1024.34(a) Timely Escrow Disbursements Required

(a) ***Timely escrow disbursements required.*** *If the terms of a mortgage loan require the borrower to make payments to the servicer of the mortgage loan for deposit into an escrow account to pay taxes, insurance premiums, and other charges for the mortgaged property, the servicer shall make payments from the escrow account in a timely manner, that is, on or before the deadline to avoid a penalty, as governed by the requirements in § 1024.17(k).*

Regulatory Commentary - Timely Escrow Payments and Treatment of Escrow Account Balances [12 CFR § 1024.34]

The regulation does not offer any commentary for this section.

Refunds of Escrow Balance [12 CFR § 1024.34(b)]

In General [12 CFR § 1024.34(b)(1)]

The Dodd-Frank Act amended RESPA by requiring that any balance in any account that is within the servicer's control at the time the loan is paid off be promptly returned to the borrower within 20 business days or credited to a similar account for a new mortgage loan to the borrower with the "same lender." This was added to the regulatory text, with some modifications.

The regulation now provides that a servicer shall return escrow funds to the borrower, with the option of applying the escrow account to the new loan in specified circumstances. The CFPB also included commentary indicating that the regulation does not prohibit a servicer from netting any remaining funds in an escrow account against the outstanding balance of the borrower's mortgage loan.

Servicer May Credit Funds to a New Escrow Account [12 CFR § 1024.34(b)(2)]

RESPA permits a servicer to credit the escrow account balance to an escrow account for a new mortgage loan to the borrower with the same lender if the servicer does not return the balance to the borrower within 20 business days. The CFPB added new regulatory language to state that this is acceptable if the new mortgage loan is provided to the borrower by a lender that was also the lender to whom the prior mortgage loan was initially payable, is the owner or assignee of the prior mortgage loan; or uses the same servicer that serviced the prior mortgage loan to service the new mortgage loan. The CFPB also added "if the borrower agrees" to the language of this section.

Regulatory Text – Refund of Escrow Balance [12 CFR § 1024.34(b)]

(b) ***Refund of escrow balance***

(1) ***In general****. Except as provided in paragraph (b)(2) of this section, within 20 days (excluding legal public holidays, Saturdays, and Sundays) of a borrower's payment of a mortgage loan in full, a servicer shall return to the borrower any amounts remaining in an escrow account that is within the servicer's control.*

(2) ***Servicer may credit funds to a new escrow account.*** *Notwithstanding paragraph (b)(1) of this section, if the borrower agrees, a servicer may credit any amounts remaining in an escrow account that is within the servicer's control to an escrow account for a new mortgage loan as of the date of the settlement of the new mortgage loan if the new mortgage loan is provided to the borrower by a lender that:*

(i) Was also the lender to whom the prior mortgage loan was initially payable;

(ii) Is the owner or assignee of the prior mortgage loan; or

(iii) Uses the same servicer that serviced the prior mortgage loan to service the new mortgage loan.

Regulatory Commentary – Refund of Escrow Balance [12 CFR § 1024.34(b)]

Paragraph 34(b)(1).

1. ***Netting of funds.*** *Section 1024.34(b)(1) does not prohibit a servicer from netting any remaining funds in an escrow account against the outstanding balance of the borrower's mortgage loan.*

Paragraph 34(b)(2).

1. ***Refund always permissible.*** *A servicer is not required to credit funds in an escrow account to an escrow account for a new mortgage loan and may, in all circumstances, comply with the requirements of §1024.34(b) by refunding the funds in the escrow account to the borrower pursuant to §1024.34(b)(1).*

2. ***Borrower agreement.*** *A borrower may agree either orally or in writing to a servicer's crediting of any remaining balance in an escrow account to a new escrow account for a new mortgage loan pursuant to §1024.34(b)(2).*